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SENATE BILL 900

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO GAMING; ENACTING THE GAMING CONTROL ACT; AUTHORIZING LIMITED MACHINE GAMING; PROVIDING FOR LICENSING AND REGULATION OF THE PERMITTED ACTIVITIES; PROVIDING FOR FEES AND A TAX; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 61 of this act may be cited as the "Gaming Control Act".

Section 2. [NEW MATERIAL] POLICY.--It is the state policy on gaming that:

A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences; and

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1 B. the holder of any license issued by the state in
2 connection with the regulation of gaming activities has a
3 revocable privilege only and has no property right or vested
4 interest in the license.

5 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Gaming Control Act:

7 A. "administrator" means the executive director or
8 the security director;

9 B. "affiliate" means a person who, directly or
10 indirectly through one or more intermediaries, controls, is
11 controlled by or is under common control with a specified
12 person;

13 C. "affiliated company" means a company that:

14 (1) controls, is controlled by or is under
15 common control with a company licensee; and

16 (2) is involved in gaming activities or
17 involved in the ownership of property on which gaming is
18 conducted;

19 D. "applicant" means a person who has applied for a
20 license or for approval of an act or transaction for which
21 approval is required or allowed pursuant to the provisions of
22 the Gaming Control Act;

23 E. "application" means a request for the issuance of
24 a license or for approval of an act or transaction for which
25 approval is required or allowed pursuant to the provisions of

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1 the Gaming Control Act, but "application" does not include a
2 supplemental form or information that may be required with the
3 application;

4 F. "associated equipment" means equipment or a
5 mechanical, electromechanical or electronic contrivance,
6 component or machine used in connection with gaming;

7 G. "board" means the gaming control board;

8 H. "certification" means a notice of approval by the
9 board of the premises on which gaming activity is conducted or
10 of a person required to be certified by the board;

11 I. "company" means a corporation, partnership,
12 limited partnership, trust, association, joint stock company,
13 joint venture, limited liability company or other form of
14 business organization that is not a natural person;

15 J. "distributor" means a person who supplies gaming
16 devices to a gaming operator but does not manufacture gaming
17 devices;

18 K. "equity security" means an interest in a company
19 that is evidenced by:

20 (1) voting stock or similar security;

21 (2) a security convertible into voting stock or
22 similar security, with or without consideration, or a security
23 carrying a warrant or right to subscribe to or purchase voting
24 stock or similar security;

25 (3) a warrant or right to subscribe to or

1 purchase voting stock or similar security; or

2 (4) a security having a direct or indirect
3 participation in the profits of the issuer;

4 L. "executive director" means the chief
5 administrative officer appointed by the board;

6 M "finding of suitability" means a certification of
7 approval issued by the board permitting a person to be involved
8 directly or indirectly with a licensee, relating only to the
9 specified involvement for which it is made;

10 N. "game" means an activity in which, upon payment
11 of consideration, a player receives a prize or other thing of
12 value, the award of which is determined by chance even though
13 accompanied by some skill; "game" does not include an activity
14 played in a private residence in which no person makes money for
15 operating the activity except through winnings as a player;

16 O. "gaming" means offering games for play or the use
17 or play of a game by a gaming establishment patron;

18 P. "gaming activity" means any endeavor associated
19 with the manufacture or distribution of gaming devices or the
20 conduct of gaming;

21 Q. "gaming device" means associated equipment or a
22 gaming machine and includes a system for processing information
23 that can alter the normal criteria of random selection that
24 affects the operation of a game or determines the outcome of a
25 game; "gaming device" does not include a system or device that

1 affects a game solely by stopping its operation so that the
2 outcome remains undetermined;

3 R. "gaming employee" means a person connected
4 directly with a gaming activity; "gaming employee" does not
5 include:

6 (1) bartenders, cocktail servers or other
7 persons engaged solely in preparing or serving food or
8 beverages;

9 (2) secretarial or janitorial personnel;

10 (3) stage, sound and light technicians; or

11 (4) other nongaming personnel;

12 S. "gaming establishment" means the premises on or
13 in which gaming is conducted;

14 T. "gaming machine" means a mechanical,
15 electromechanical or electronic contrivance or machine that,
16 upon insertion of a coin, token or similar object, or upon
17 payment of any consideration, is available to play or operate a
18 game, whether the payoff is made automatically from the machine
19 or in any other manner;

20 U. "gaming operator" means a person who conducts
21 gaming;

22 V. "holding company" means a company that directly
23 or indirectly owns or has the power or right to control a
24 company that is an applicant or licensee, but a company that
25 does not have a beneficial ownership of more than ten percent of

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1 the equity securities of a publicly traded corporation is not a
2 holding company;

3 W. "immediate family" means natural persons who are
4 related to a specified natural person by affinity or
5 consanguinity in the first through the third degree;

6 X. "institutional investor" means a state or federal
7 government pension plan or a person that meets the requirements
8 of a "qualified institutional buyer" as defined in Rule 144A of
9 the federal Securities Act of 1933, and is:

10 (1) a bank as defined in Section 3(a)(6) of the
11 federal Securities Exchange Act of 1934;

12 (2) an insurance company as defined in Section
13 2(a)(17) of the federal Investment Company Act of 1940;

14 (3) an investment company registered under
15 Section 8 of the federal Investment Company Act of 1940;

16 (4) an investment adviser registered under
17 Section 203 of the federal Investment Advisers Act of 1940;

18 (5) collective trust funds as defined in
19 Section 3(c)(11) of the federal Investment Company Act of 1940;

20 (6) an employee benefit plan or pension fund
21 that is subject to the federal Employee Retirement Income
22 Security Act of 1974, excluding an employee benefit plan or
23 pension fund sponsored by a publicly traded corporation
24 registered with the board; or

25 (7) a group comprised entirely of persons

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1 specified in Paragraphs (1) through (6) of this subsection;

2 Y. "intermediary company" means a company that:

3 (1) is a holding company with respect to a
4 company that is an applicant or licensee; and

5 (2) is a subsidiary with respect to any holding
6 company;

7 Z. "key executive" means an executive who is a
8 department head of a licensee having the power to exercise
9 significant influence over decisions concerning any part of the
10 licensed operations of the licensee or whose compensation
11 exceeds an amount established by the board in a regulation;

12 AA. "license" means an authorization required by the
13 board for engaging in gaming activities;

14 BB. "licensee" means a person to whom a valid
15 license has been issued by the board;

16 CC. "manufacturer" means a person who manufactures,
17 fabricates, assembles, produces, programs or makes modifications
18 to any gaming device for use or play in New Mexico or for sale,
19 lease or distribution outside New Mexico from any location
20 within New Mexico;

21 DD. "net take" means the total of the following,
22 less the total of all cash paid out as losses to winning patrons
23 and those amounts paid to purchase annuities to fund losses paid
24 to winning patrons over several years by independent
25 administrators:

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1 (1) cash received from patrons for playing a
2 game;

3 (2) cash received in payment for credit
4 extended by a licensee to a patron for playing a game; and

5 (3) compensation received for conducting a game
6 in which the licensee is not a party to a wager;

7 EE. "nonprofit organization" means an organization
8 that:

9 (1) is described in Section 501(c)(8), (10),
10 (19) or (23) of the federal Internal Revenue Code of 1986 that
11 is exempt from federal income taxation pursuant to Section
12 501(a) of that code;

13 (2) has been issued a license pursuant to
14 Section 60-6A-5 NMSA 1978 but does not have gaming as its
15 primary activity; and

16 (3) has been in continuous existence since
17 before January 1, 1997;

18 FF. "person" means a legal entity;

19 GG. "premises" means land, together with all
20 buildings, improvements and personal property located on the
21 land;

22 HH. "progressive jackpot" means a prize that
23 increases over time or as gaming machines that are linked to a
24 progressive system are played and upon conditions established by
25 the board may be paid by an annuity;

1 II. "progressive system" means one or more gaming
2 machines linked to one or more common progressive jackpots;

3 JJ. "publicly traded corporation" means a
4 corporation that:

5 (1) has one or more classes of securities
6 registered pursuant to the securities laws of the United States
7 or New Mexico;

8 (2) has a federal tax number;

9 (3) is an issuer subject to the securities laws
10 of the United States or New Mexico; or

11 (4) has one or more classes of securities
12 registered or is an issuer pursuant to applicable foreign laws
13 that the board finds provide protection for institutional
14 investors that is comparable to or greater than the stricter of
15 the securities laws of the United States or New Mexico;

16 KK. "registration" means a board action that
17 authorizes a company to be a holding company with respect to a
18 company that holds or applies for a license or that relates to
19 other persons required to be registered pursuant to the Gaming
20 Control Act;

21 LL. "security director" means the head of the
22 security division appointed by the board;

23 MM. "subsidiary" means a company, all or a part of
24 whose outstanding equity securities are owned, subject to a
25 power or right of control or held, with power to vote, by a

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1 holding company or intermediary company; and

2 NN. "work permit" means a card, certificate or
3 permit issued by the board, whether denominated as a work
4 permit, registration card or otherwise, authorizing the
5 employment of the holder as a gaming employee.

6 Section 4. [NEW MATERIAL] LIMITED GAMING ACTIVITY
7 PERMITTED. --Gaming activity is permitted in New Mexico only if
8 it is conducted in compliance with and pursuant to:

9 A. the Gaming Control Act; or

10 B. a state or federal law other than the Gaming
11 Control Act that expressly permits the activity or exempts it
12 from the application of the state criminal law, or both.

13 Section 5. [NEW MATERIAL] GAMING CONTROL BOARD
14 CREATED. --

15 A. The "gaming control board" is created and
16 consists of five members appointed by the governor with the
17 advice and consent of the senate. All members of the board
18 shall be residents of New Mexico and citizens of the United
19 States. At least one member of the board shall have a minimum
20 of five years of previous employment in a supervisory and
21 administrative position in a law enforcement agency; at least
22 one member of the board shall be a certified public accountant
23 in New Mexico who has had at least five years' experience in
24 public accountancy; at least one member of the board shall be
25 an attorney who has been admitted to practice before the

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1 supreme court of New Mexico; and at least one member of the
2 board shall have at least five years of previous employment in
3 a top-level supervisory and administrative position in a
4 governmental gaming regulatory agency.

5 B. The members of the board shall be appointed for
6 terms of five years, except, of the members who are first
7 appointed, one member with law enforcement experience and one
8 member who is a certified public accountant shall be appointed
9 for a term of five years; one member who is an attorney and
10 one member who has gaming regulatory experience shall be
11 appointed for terms of four years; and the fifth member shall
12 be appointed for a term of three years. Thereafter, all
13 members shall be appointed for terms of five years. No person
14 shall serve as a board member for more than two consecutive
15 terms or ten years total.

16 C. No person appointed to the board may be
17 employed in any other capacity or shall in any manner receive
18 compensation for services rendered to any person or entity
19 other than the board while a member of the board.

20 D. Vacancies on the board shall be filled within
21 thirty days by the governor with the advice and consent of the
22 senate for the unexpired portion of the term in which the
23 vacancy occurs. A person appointed to fill a vacancy shall
24 meet all qualification requirements of the office established
25 in this section.

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1 E. The governor shall choose a chairman annually
2 from the board's membership.

3 F. No more than three members of the board shall
4 be from the same political party.

5 G. The members of the board shall be full-time
6 state officials and shall receive a salary set by the
7 governor.

8 H. The department of public safety shall conduct
9 background investigations of all members of the board prior to
10 confirmation by the senate. To assist the department in the
11 background investigation, the prospective board member shall
12 furnish a disclosure statement to the department on a form
13 provided by the department containing that information deemed
14 by the department as necessary for completion of a detailed
15 and thorough background investigation. As a minimum, the
16 required information shall include:

17 (1) a full set of fingerprints made by a law
18 enforcement agency on forms supplied by the department;

19 (2) complete information and details with
20 respect to the prospective board member's antecedents, habits,
21 immediate family, character, criminal record, financial
22 affairs, business activities and business associates covering
23 at least a ten-year period immediately preceding the date of
24 submitting the disclosure statement;

25 (3) complete disclosure of any equity

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1 interest held by the prospective board member or a member of
2 his immediate family in a business connected with gaming; and

3 (4) the names and addresses of members of
4 the immediate family of the prospective board member.

5 I. No person may be appointed or confirmed as a
6 member of the board if that person or member of his immediate
7 family holds an equity interest in a business connected with
8 gaming.

9 J. A prospective board member shall provide
10 assistance and information requested by the department of
11 public safety or the governor and shall cooperate in any
12 inquiry or investigation of the prospective board member's
13 fitness or qualifications to hold the office to which he is
14 appointed. The senate shall not confirm a prospective board
15 member if it has reasonable cause to believe that the
16 prospective board member has:

17 (1) knowingly misrepresented or omitted a
18 material fact required in a disclosure statement;

19 (2) been convicted of a felony, a gaming
20 related offense or a crime involving fraud, theft or moral
21 turpitude within ten years immediately preceding the date of
22 submitting a disclosure statement required pursuant to the
23 provisions of Subsection H of this section;

24 (3) exhibited a history of willful disregard
25 for the gaming laws of this or any other state or the United

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1 States; or

2 (4) had a permit or license issued pursuant
3 to the gaming laws of this or any other state or the United
4 States permanently suspended or revoked for cause.

5 K. The senate may in its discretion not confirm a
6 prospective board member.

7 L. At the time of taking office, each board member
8 shall file with the secretary of state a sworn statement that
9 he is not disqualified under the provisions of Subsection I of
10 this section.

11 Section 6. [NEW MATERIAL] BOARD- - MEETINGS- - QUORUM- -
12 RECORDS. - -

13 A. A majority of the qualified membership of the
14 board then in office constitutes a quorum. No action may be
15 taken by the board unless at least three members concur.

16 B. Written notice of the time and place of each
17 board meeting shall be given to each member of the board at
18 least ten days prior to the meeting.

19 C. Meetings of the board shall be open and public
20 in accordance with the Open Meetings Act, except that the
21 board may close a meeting to hear confidential security and
22 investigative information and other information made
23 confidential by the provisions of the Gaming Control Act.

24 D. All proceedings of the board shall be recorded
25 by audiotape or other equivalent verbatim audio recording

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1 device.

2 E. The chairman of the board, the administrators
3 or a majority of the members of the board then in office may
4 call a special meeting of the board upon at least five days
5 prior written notice to all members of the board and the
6 executive director.

7 Section 7. [NEW MATERIAL] BOARD'S POWERS AND DUTIES. --

8 A. The board shall implement the state's policy on
9 gaming consistent with the provisions of the Gaming Control
10 Act. It has the duty to fulfill all responsibilities assigned
11 to it pursuant to that act, and it has all authority necessary
12 to carry out those responsibilities. It may delegate
13 authority to the administrators, but it retains
14 accountability. The board is an adjunct agency.

15 B. The board shall:

- 16 (1) employ the administrators;
- 17 (2) create a security division of the board;
- 18 (3) adopt and publish regulations regarding
19 licensure and specifications for gaming devices within six
20 months of the appointment of the members. No license shall be
21 issued pursuant to the provisions of the Gaming Control Act
22 prior to six months following the publication of the
23 regulations regarding licensure and specifications for gaming
24 devices;

25 (4) make the final decision on issuance,

1 denial, suspension and revocation of all licenses pursuant to
2 and consistent with the provisions of the Gaming Control Act;

3 (5) develop, adopt and promulgate all
4 regulations necessary to implement and administer the
5 provisions of the Gaming Control Act;

6 (6) conduct itself, or employ a hearing
7 officer to conduct, all hearings required by the provisions of
8 the Gaming Control Act and other hearings it deems appropriate
9 to fulfill its responsibilities;

10 (7) meet at least once each month;

11 (8) prepare and submit an annual report in
12 December of each year to the governor and the legislature,
13 covering activities of the board in the most recently
14 completed fiscal year, a summary of gaming activities in the
15 state and any recommended changes in or additions to the laws
16 relating to gaming in the state; and

17 (9) offer seminars on the premises of
18 gaming establishments to gaming operator licensees and their
19 employees to provide information on identification of
20 compulsive gamblers and methods that can be used to prevent
21 compulsive gambling.

22 C. The board may:

23 (1) impose civil fines not to exceed twenty-
24 five thousand dollars (\$25,000) for the first violation and
25 fifty thousand dollars (\$50,000) for subsequent violations of

1 any prohibitory provision of the Gaming Control Act or any
2 prohibitory provision of a regulation adopted pursuant to that
3 act;

4 (2) conduct investigations;

5 (3) subpoena persons and documents to compel
6 access to or the production of documents and records,
7 including books and memoranda, in the custody or control of
8 any licensee;

9 (4) compel the appearance of employees of a
10 licensee or persons for the purpose of ascertaining compliance
11 with provisions of the Gaming Control Act or a regulation
12 adopted pursuant to its provisions;

13 (5) administer oaths and take depositions to
14 the same extent and subject to the same limitations as would
15 apply if the deposition were pursuant to discovery rules in a
16 civil action in the district court;

17 (6) sue and be sued subject to the
18 limitations of the Tort Claims Act;

19 (7) contract for the provision of goods and
20 services necessary to carry out its responsibilities;

21 (8) conduct audits of applicants, licensees
22 and persons affiliated with licensees;

23 (9) inspect, examine, photocopy and audit
24 all documents and records of an applicant or licensee relevant
25 to his gaming activities in the presence of the applicant or

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1 licensee or his agent;

2 (10) require verification of income and all
3 other matters pertinent to the gaming activities of an
4 applicant or licensee affecting the enforcement of any
5 provisions of the Gaming Control Act;

6 (11) inspect all places where gaming
7 activities are conducted and inspect all property connected
8 with gaming in those places;

9 (12) summarily seize, remove and impound
10 from places inspected any gaming devices, property connected
11 with gaming, documents or records for the purpose of
12 examination or inspection;

13 (13) inspect, examine, photocopy and audit
14 all documents and records of any affiliate of an applicant or
15 licensee who the board knows or reasonably suspects is
16 involved in the financing, operation or management of the
17 applicant or licensee. The inspection, examination,
18 photocopying and audit shall be in the presence of a
19 representative of the affiliate or its agent when practicable;
20 and

21 (14) except for the powers specified in
22 Paragraphs (1) and (6) of this subsection, carry out all or
23 part of the foregoing powers and activities through the
24 executive director or security director.

25 Section 8. [NEW MATERIAL] BOARD REGULATIONS--

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1 DISCRETIONARY REGULATIONS-- PROCEDURE-- REQUIRED PROVISIONS. --

2 A. The board may adopt any regulation:

3 (1) consistent with the provisions of the
4 Gaming Control Act; and

5 (2) deemed necessary to implement the
6 provisions of the Gaming Control Act.

7 B. No regulation shall be adopted, amended or
8 repealed without a public hearing on the proposed action
9 before the board or a hearing officer designated by it. The
10 public hearing shall be held in Santa Fe. Notice of the
11 subject matter of the regulation, the action proposed to be
12 taken, the time and place of the hearing, the manner in which
13 interested persons may present their views and the method by
14 which copies of the proposed regulation, amendment or repeal
15 may be obtained shall be published once at least thirty days
16 prior to the hearing date in a newspaper of general
17 circulation and mailed at least thirty days prior to the
18 hearing date to all persons who have made a written request
19 for advance notice of hearing. All regulations and actions
20 taken on regulations shall be filed in accordance with the
21 State Rules Act.

22 C. The board shall adopt regulations:

23 (1) prescribing the method and form of
24 application to be followed by an applicant;

25 (2) prescribing the information to be

1 furnished by an applicant or licensee concerning his
2 antecedents, immediate family, habits, character, associates,
3 criminal record, business activities and financial affairs,
4 past or present;

5 (3) prescribing the manner and procedure of
6 all hearings conducted by the board or a hearing officer;

7 (4) prescribing the manner and method of
8 collection and payment of fees;

9 (5) prescribing the manner and method of the
10 issuance of licenses, permits, registrations, certificates and
11 other actions of the board not elsewhere prescribed in the
12 Gaming Control Act;

13 (6) defining the area, games and gaming
14 devices allowed and the methods of operation of the games and
15 gaming devices for authorized gaming;

16 (7) prescribing under what conditions the
17 nonpayment of winnings is grounds for suspension or revocation
18 of a license of a gaming operator;

19 (8) governing the manufacture, sale,
20 distribution, repair and servicing of gaming devices;

21 (9) prescribing accounting procedures,
22 security, collection and verification procedures required of
23 licensees and matters regarding financial responsibility of
24 licensees;

25 (10) prescribing what shall be considered to

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1 be an unsuitable method of operating gaming activities;

2 (11) restricting access to confidential
3 information obtained pursuant to the provisions of the Gaming
4 Control Act and ensuring that the confidentiality of that
5 information is maintained and protected;

6 (12) prescribing financial reporting and
7 internal control requirements for licensees;

8 (13) prescribing the manner in which
9 winnings, compensation from gaming activities and net take
10 shall be computed and reported by a gaming operator licensee;

11 (14) prescribing the frequency of and the
12 matters to be contained in audits of and periodic financial
13 reports from a gaming operator licensee consistent with
14 standards prescribed by the board;

15 (15) prescribing the procedures to be
16 followed by a gaming operator licensee for the exclusion of
17 persons from gaming establishments;

18 (16) establishing criteria and conditions
19 for the operation of progressive systems;

20 (17) establishing criteria and conditions
21 for approval of procurement by the board of personal property
22 valued in excess of twenty thousand dollars (\$20,000),
23 including background investigation requirements for a person
24 submitting a bid or proposal; and

25 (18) establishing an applicant fee schedule

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1 for processing applications that is based on costs of the
2 application review incurred by the board whether directly or
3 through payment by the board for costs charged for
4 investigations of applicants by state departments and agencies
5 other than the board, which regulation shall set a maximum fee
6 of one hundred thousand dollars (\$100,000).

7 Section 9. [NEW MATERIAL] ADMINISTRATORS--EMPLOYMENT--
8 QUALIFICATIONS.--

9 A. Two administrators, an executive director and a
10 security director, shall be employed by, report directly to
11 and serve at the pleasure of the board.

12 B. The executive director shall have had at least
13 five years of responsible supervisory administrative
14 experience in public or business administration.

15 C. The security director shall have had at least
16 five years of responsible supervisory administrative
17 experience in a law enforcement agency, shall have graduated
18 from a law enforcement academy with a minimum of four hundred
19 hours of basic police training and have at least a bachelor's
20 degree from an accredited post-secondary educational
21 institution.

22 Section 10. [NEW MATERIAL] EXECUTIVE DIRECTOR--
23 DUTIES.--

24 A. The executive director shall:

25 (1) implement the policies of the board that

1 are not assigned to the security director;

2 (2) employ all personnel of the board,
3 except security personnel, who shall be covered employees
4 pursuant to the provisions of the Personnel Act;

5 (3) take administrative action by issuing
6 orders and instructions consistent with the Gaming Control Act
7 and regulations of the board to assure implementation of and
8 compliance with the provisions of that act and those
9 regulations;

10 (4) prepare an annual budget for the board
11 for divisions under his direction and submit it to the board;

12 (5) coordinate and cooperate with the
13 security director at all times to the extent possible in
14 matters affecting activities of the board and its personnel;
15 and

16 (6) make recommendations to the board of
17 proposed regulations and any legislative changes needed to
18 provide better administration of the Gaming Control Act and
19 fair and efficient regulation of gaming activities in the
20 state.

21 B. The executive director may:

22 (1) establish subdivisions of the board as
23 he determines are appropriate to administer the provisions of
24 the Gaming Control Act;

25 (2) delegate authority to subordinates as he

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1 deems necessary and appropriate, clearly delineating the
2 delegated authority and the limitations on it, if any;

3 (3) conduct research and studies that will
4 improve the operations of the board and the provision of
5 services to the citizens of the state; and

6 (4) provide courses of instruction and
7 practical training for employees of the board and other
8 persons involved in the activities regulated by the board with
9 the objectives of improving operations of the board and
10 achieving compliance with the law and regulations.

11 Section 11. [NEW MATERIAL] SECURITY DIRECTOR--
12 DUTIES.--

13 A. The security director shall:

14 (1) implement all policies of the board
15 assigned to him by the board;

16 (2) employ all security personnel, some of
17 whom shall be designated as New Mexico peace officers subject
18 to proper certification pursuant to the Law Enforcement
19 Training Act and all of whom shall be covered employees
20 pursuant to the provisions of the Personnel Act;

21 (3) conduct background investigations of
22 employees of the board and applicants, their affiliates and
23 employees as required by the board;

24 (4) prepare an annual budget for the
25 security division of the board and submit it to the board for

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1 approval;

2 (5) conduct internal investigations of the
3 board or contract with the attorney general to conduct
4 investigations of the board after consultation with and
5 approval by a majority of the board members;

6 (6) conduct investigations of gaming
7 activities and licensees necessary to provide for the secure
8 operation of gaming activities in the state and the
9 enforcement of the provisions of the Gaming Control Act and
10 its regulations;

11 (7) take administrative action by issuing
12 orders and instructions required for the security of the board
13 consistent with the Gaming Control Act and regulations of the
14 board to assure implementation of and compliance with the
15 provisions of that act and those regulations;

16 (8) coordinate and cooperate with the
17 executive director at all times to the extent possible in
18 security matters affecting activities of the board and its
19 personnel; and

20 (9) make recommendations to the board of
21 proposed regulations and any legislative changes needed to
22 make the activities of licensees more secure and to provide
23 more effective and efficient security of the board or the
24 activities licensed pursuant to the provisions of the Gaming
25 Control Act.

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B. The security director may:

(1) establish subdivisions of the security division as he determines are appropriate for the secure operation of the board, the investigation of gaming activities and licensees and the enforcement of the provisions of the Gaming Control Act and its regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating the delegated authority and the limitations on it, if any; and

(3) provide courses of instruction and practical training for employees of the security division and for the security personnel of licensees with the objective of providing effective, efficient and secure operation of the board and gaming activities in the state.

Section 12. [NEW MATERIAL] INVESTIGATION OF ADMINISTRATOR CANDIDATES AND EMPLOYEES. --

A. A person who is under consideration in the final selection process for appointment as an administrator shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as an administrator until a background investigation is completed and a report is made to the board.

B. A person who has reached the final selection process for employment by an administrator shall file a disclosure statement pursuant to the requirements of this

1 section if the administrator or the board has directed that
2 person do so. The person shall not be further considered for
3 employment until a background investigation is completed and a
4 report is made to the administrator.

5 C. Forms for the disclosure statements required by
6 this section shall be developed by the board in cooperation
7 with the department of public safety. At a minimum, the
8 following information shall be required of a person submitting
9 a statement:

10 (1) a full set of fingerprints made by a law
11 enforcement agency on forms supplied by the board;

12 (2) complete information and details with
13 respect to the person's antecedents, immediate family, habits,
14 character, criminal record, business activities and business
15 associates, covering at least a ten-year period immediately
16 preceding the date of submitting the disclosure statement; and

17 (3) a complete description of any equity
18 interest held in a business connected with the gaming
19 industry.

20 D. In preparing an investigative report, the
21 department of public safety or the board may request and
22 receive criminal history information from the federal bureau
23 of investigation or any other law enforcement agency or
24 organization. The department and the board shall maintain
25 confidentiality regarding information received from a law

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1 enforcement agency that may be imposed by the agency as a
2 condition for providing the information.

3 E. All persons required to file a disclosure
4 statement shall provide any assistance or information
5 requested by the department of public safety or the board and
6 shall cooperate in any inquiry or investigation.

7 F. If information required to be included in a
8 disclosure statement changes or if information is added after
9 the statement is filed, the person required to file it shall
10 provide that information in writing to the person requesting
11 the investigation. The supplemental information shall be
12 provided within thirty days after the change or addition.

13 G. The board shall not appoint a person as an
14 administrator, and an administrator shall not employ a person,
15 if the board or the administrator has reasonable cause to
16 believe that the person has:

17 (1) knowingly misrepresented or omitted a
18 material fact required in a disclosure statement;

19 (2) been convicted of a felony, a gaming
20 related offense or a crime involving fraud, theft or moral
21 turpitude within ten years immediately preceding the date of
22 submitting a disclosure statement required pursuant to this
23 section;

24 (3) exhibited a history of willful disregard
25 for the gaming laws of this or any other state or the United

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1 States; or

2 (4) had a permit or license issued pursuant
3 to the gaming laws of this or any other state or the United
4 States permanently suspended or revoked for cause.

5 H. Both the board and an administrator may
6 exercise absolute discretion in their respective appointing
7 and employing powers.

8 Section 13. [NEW MATERIAL] CONFLICTS OF INTEREST--
9 BOARD--ADMINISTRATORS. --

10 A. In addition to all other provisions of New
11 Mexico law regarding conflicts of interest of state officials
12 and employees, a member of the board, an administrator, a
13 person in the immediate family of or residing in the household
14 of a member of the board or an administrator shall not:

15 (1) directly or indirectly, individually, as
16 a proprietor or as a member, stockholder, director or officer
17 of a company, have an interest in a business engaged in gaming
18 activities in New Mexico or another jurisdiction; or

19 (2) accept or agree to accept any economic
20 opportunity, gift, loan, gratuity, special discount, favor,
21 hospitality or service having an aggregate value of one
22 hundred dollars (\$100) or more in any calendar year from a
23 licensee or applicant.

24 B. If a member of the board, an administrator or a
25 person in the immediate family of or residing in the household

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1 of a member of the board or an administrator violates a
2 provision of this section the member of the board or the
3 administrator shall be removed from his office or position. A
4 member of the board shall be removed from the board by the
5 governor. An administrator shall be terminated from his
6 position by the board.

7 Section 14. [NEW MATERIAL] ACTIVITIES REQUIRING
8 LICENSING. --

9 A. A person shall not conduct gaming unless he is
10 licensed by the board as a gaming operator.

11 B. A person shall not sell, supply or distribute
12 any gaming device or associated equipment to a gaming operator
13 licensee for use or play in this state unless he is licensed
14 by the board as a distributor.

15 C. A person shall not manufacture, fabricate,
16 assemble, program or make modifications to a gaming device or
17 associated equipment for use or play in this state or for use
18 or play outside of this state from any location within this
19 state unless he is licensed by the board as a manufacturer.
20 In New Mexico, a manufacturer licensee may sell or supply only
21 to a distributor licensee or a person out of state and only
22 the gaming devices or associated equipment that he
23 manufactures, fabricates, assembles, programs or modifies.

24 D. A gaming operator licensee may sell or trade in
25 a gaming device or associated equipment to a distributor

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1 licensee or a manufacturer licensee.

2 E. A person shall not sell or supply a gaming
3 machine from a location within the state to a location outside
4 of the state unless that person is a distributor licensee or a
5 manufacturer licensee.

6 F. A gaming operator licensee or a person other
7 than a manufacturer licensee or distributor licensee shall not
8 possess or control a place where there is an unlicensed gaming
9 machine. Any unlicensed gaming machine, except one in the
10 possession of a licensee while awaiting transfer to a gaming
11 operator licensee for licensure of the machine, is subject to
12 forfeiture and confiscation by any law enforcement agency or
13 peace officer.

14 G. A person shall not service or repair a gaming
15 device or associated equipment unless he is a manufacturer
16 licensee, a distributor licensee or employed by a manufacturer
17 licensee or a distributor licensee.

18 H. A person shall not engage in any activity for
19 which the board requires a license or permit without obtaining
20 the license or permit.

21 I. Except as provided in Subsections C and D of
22 this section, a person shall not purchase, lease or acquire
23 possession of a gaming device or associated equipment except
24 from a distributor licensee.

25 Section 15. [NEW MATERIAL] LICENSURE-- APPLICATION.--

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1 A. The board shall establish the following
2 categories of licenses:

- 3 (1) manufacturer;
- 4 (2) distributor;
- 5 (3) gaming operator; and
- 6 (4) gaming machine.

7 B. The board shall issue certifications for:

- 8 (1) the premises of a gaming establishment,
9 a manufacturer or a distributor; and
- 10 (2) key executives.

11 C. The board shall issue work permits for gaming
12 employees.

13 D. A licensee shall not be issued more than one
14 type of license but this provision does not prohibit a
15 licensee from owning, leasing, acquiring or having in his
16 possession licensed gaming machines if that activity is
17 otherwise allowed by the provisions of the Gaming Control Act.
18 A licensee shall not own a majority interest in, manage or
19 otherwise control a holder of another type of license issued
20 pursuant to the provisions of that act.

21 E. Applicants shall apply on forms provided by the
22 board and furnish all information requested by the board.
23 Submission of an application constitutes consent to a credit
24 check of the applicant and all persons having a substantial
25 interest in the applicant and any other background

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1 investigations required pursuant to the Gaming Control Act or
2 deemed necessary by the board.

3 F. All licenses issued by the board pursuant to
4 the provisions of this section shall be reviewed for renewal
5 annually unless revoked, suspended, canceled or terminated.

6 G. A license shall not be transferred or assigned.

7 H. The application for a license shall include:

8 (1) the name of the applicant;

9 (2) the location of the proposed operation;

10 (3) the gaming devices to be operated,
11 manufactured, distributed or serviced;

12 (4) the names of all persons having a direct
13 or indirect interest in the business of the applicant and the
14 nature of such interest; and

15 (5) such other information and details as
16 the board may require.

17 I. The board shall furnish to the applicant
18 supplemental forms that the applicant shall complete and file
19 with the application. Such supplemental forms shall require
20 complete information and details with respect to the
21 applicant's antecedents, immediate family, habits, character,
22 criminal record, business activities, financial affairs and
23 business associates, covering at least a ten-year period
24 immediately preceding the date of filing of the application.

25 Section 16. [NEW MATERIAL] LICENSE CERTIFICATION AND

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1 WORK PERMIT FEES. --

2 A. License and other fees shall be established by
3 board regulation but shall not exceed the following amounts:

4 (1) manufacturer's license, twenty thousand
5 dollars (\$20,000) for the initial license and five thousand
6 dollars (\$5,000) for annual renewal;

7 (2) distributor's license, ten thousand
8 dollars (\$10,000) for the initial license and one thousand
9 dollars (\$1,000) for annual renewal;

10 (3) gaming operator's license for a
11 racetrack, fifty thousand dollars (\$50,000) for the initial
12 license and ten thousand dollars (\$10,000) for annual renewal;

13 (4) gaming operator's license for a
14 nonprofit organization, one thousand dollars (\$1,000) for the
15 initial license and two hundred dollars (\$200) for annual
16 renewal;

17 (5) for each separate gaming machine
18 licensed to a person holding an operator's license, five
19 hundred dollars (\$500) for the initial license and one hundred
20 dollars (\$100) for annual renewal;

21 (6) premises certification, five hundred
22 dollars (\$500) annually; and

23 (7) work permit, one hundred dollars (\$100)
24 annually.

25 B. The board shall establish the fee for

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1 certifications or other actions by regulation, but no fee
2 established by the board shall exceed one thousand dollars
3 (\$1,000) except for those fees that reimburse the board for
4 the costs of background investigations.

5 C. All license, certification or work permit fees
6 shall be paid to the board at the time and in the manner
7 established by regulations of the board.

8 Section 17. [NEW MATERIAL] ACTION BY BOARD ON
9 APPLICATIONS. --

10 A. A person that the board determines is qualified
11 to receive a license pursuant to the provisions of the Gaming
12 Control Act may be issued a license. The burden of proving
13 qualifications is on the applicant.

14 B. A license shall not be issued unless the board
15 is satisfied that the applicant is:

16 (1) a person of good moral character,
17 honesty and integrity;

18 (2) a person whose prior activities,
19 criminal record, reputation, habits and associations do not
20 pose a threat to the public interest or to the effective
21 regulation and control of gaming or create or enhance the
22 dangers of unsuitable, unfair or illegal practices, methods
23 and activities in the conduct of gaming or the carrying on of
24 the business and financial arrangements incidental thereto;
25 and

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1 (3) in all other respects qualified to be
2 licensed consistent with the laws of this state.

3 C. A license shall not be issued unless the
4 applicant has satisfied the board that:

5 (1) the applicant has adequate business
6 probity, competence and experience in business;

7 (2) the proposed financing of the applicant
8 is adequate for the nature of the proposed license and from a
9 suitable source; any lender or other source of money or credit
10 that the board finds does not meet the standards set forth in
11 Subsection B of this section shall be deemed unsuitable; and

12 (3) the applicant is sufficiently
13 capitalized under standards set by the board to conduct the
14 business covered by the license.

15 D. An application to receive a license,
16 certification or work permit constitutes a request for a
17 determination of the applicant's general moral character,
18 integrity and ability to participate or engage in or be
19 associated with gaming. Any written or oral statement made in
20 the course of an official proceeding of the board or by a
21 witness testifying under oath that is relevant to the purpose
22 of the proceeding is absolutely privileged and does not impose
23 liability for defamation or constitute a ground for recovery
24 in any civil action.

25 E. The board shall not issue a license or

1 certification to an applicant who has been denied a license or
2 certification in this state or another state, who has had a
3 license, certification or permit issued pursuant to the gaming
4 laws of a state or the United States permanently suspended or
5 revoked for cause or who is currently under suspension or
6 subject to any other limiting action in this state or another
7 state involving gaming activities or licensure for gaming
8 activities.

9 F. The board shall investigate the qualifications
10 of each applicant before a license, certification or work
11 permit is issued by the board and shall continue to observe
12 and monitor the conduct of all licensees or certification or
13 work permit holders and the persons having a material
14 involvement directly or indirectly with a licensee.

15 G. The board has the authority to deny an
16 application or limit, condition, restrict, revoke or suspend a
17 license, certification or permit for any cause.

18 H. After issuance, a license, certification or
19 permit shall continue in effect upon proper payment of the
20 initial and renewal fees, subject to the power of the board to
21 revoke, suspend, condition or limit licenses, certification or
22 permits.

23 I. The board has full and absolute power and
24 authority to deny an application for any cause it deems
25 reasonable. If an application is denied, the board shall

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1 prepare and file its written decision on which its order
2 denying the application is based.

3 Section 18. [NEW MATERIAL] INVESTIGATION-- APPLICANTS
4 FOR LICENSES, CERTIFICATIONS OR PERMITS.--The board shall
5 conduct an investigation of the applicant within thirty days
6 after an application is filed and supplemental information
7 that the board may require is received.

8 Section 19. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS
9 FOR COMPANIES.--In order to be eligible to receive a license,
10 a company shall:

11 A. be incorporated or otherwise organized and in
12 good standing in this state or incorporated or otherwise
13 organized in another state, qualified to do business in this
14 state and in good standing in this state and in the state of
15 incorporation;

16 B. comply with all of the requirements of the laws
17 of this state pertaining to the company;

18 C. maintain a ledger in the principal office of
19 the company in this state, which shall:

20 (1) at all times reflect the ownership
21 according to company records of every class of security issued
22 by the company; and

23 (2) be available for inspection by the board
24 at all reasonable times without notice; and

25 D. file notice of all changes of ownership of all

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1 classes of securities issued by the company with the board
2 within thirty days of the change.

3 Section 20. [NEW MATERIAL] REGISTRATION WITH BOARD BY
4 COMPANY APPLICANTS--REQUIRED INFORMATION.--A company applicant
5 shall provide the following information to the board on forms
6 provided by the board:

7 A. the organization, financial structure and
8 nature of the business to be operated, including the names and
9 personal histories of all officers, directors and key
10 executives;

11 B. the rights and privileges acquired by the
12 holders of different classes of authorized securities;

13 C. the terms and conditions of all outstanding
14 loans, mortgages, trust deeds, pledges or any other
15 indebtedness or security interest evidenced by a security
16 instrument pertaining to the proposed gaming operation or
17 other licensed activity in this state and the name and address
18 of the person who is servicing the loan, mortgage, trust deed,
19 pledge or other indebtedness or security device interest;

20 D. remuneration to persons, other than directors,
21 officers and key executives, exceeding fifty thousand dollars
22 (\$50,000) per year;

23 E. bonus and profit-sharing arrangements within
24 the company;

25 F. management and service contracts pertaining to

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1 the proposed gaming activity in this state;

2 G. balance sheets and profit and loss statements
3 for at least the three preceding fiscal years, or, if the
4 company has not been in business for a period of three years,
5 balance sheets and profit and loss statements from the time of
6 its commencement of business operations and projected for
7 three years from the time of its commencement of business
8 operations. All balance sheets and profit and loss statements
9 shall be certified by independent certified public
10 accountants; and

11 H. any further financial data that the board deems
12 necessary or appropriate.

13 Section 21. [NEW MATERIAL] INDIVIDUAL CERTIFICATION OF
14 OFFICERS, DIRECTORS AND OTHER PERSONS. --An officer, director,
15 equity security holder of five percent or more, partner,
16 general partner, limited partner, trustee or beneficiary of
17 the company that holds or has applied for a license shall be
18 certified individually, according to the provisions of the
19 Gaming Control Act, and if in the judgment of the board the
20 public interest is served by requiring any or all of the
21 company's key executives to be certified, the company shall
22 require those persons to apply for certification. A person
23 who is required to be certified pursuant to this section shall
24 apply for certification within thirty days after becoming an
25 officer, director, equity security holder of five percent or

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1 more, partner, general partner, limited partner of five
2 percent or more, trustee, beneficiary or key executive. A
3 person who is required to be certified pursuant to a decision
4 of the board shall apply for certification within thirty days
5 after the board so requests.

6 Section 22. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS
7 OR BECOMES A SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON
8 UNSUITABLE PERSONS-- OTHER REQUIREMENTS. --

9 A. If the company applicant or licensee is or
10 becomes a subsidiary, each nonpublicly traded holding company
11 and intermediary company with respect to the subsidiary
12 company shall:

13 (1) qualify to do business in New Mexico;

14 and

15 (2) register with the board and furnish to
16 the board the following information:

17 (a) a complete list of all beneficial
18 owners of five percent or more of its equity securities, which
19 shall be updated within thirty days after any change;

20 (b) the names of all company officers
21 and directors within thirty days of their appointment or
22 election;

23 (c) its organization, financial
24 structure and nature of the business it operates;

25 (d) the terms, position, rights and

1 privileges of the different classes of its outstanding
2 securities;

3 (e) the terms on which its securities
4 are to be, and during the preceding three years have been,
5 offered;

6 (f) the holder of and the terms and
7 conditions of all outstanding loans, mortgages, trust deeds,
8 pledges or any other indebtedness or security interest
9 pertaining to the applicant or licensee;

10 (g) the extent of the securities
11 holdings or other interest in the holding company or
12 intermediary company of all officers, directors, key
13 executives, underwriters, partners, principals, trustees or
14 any direct or beneficial owners, and the amount of any
15 remuneration paid them as compensation for their services in
16 the form of salary, wages, fees or by contract pertaining to
17 the licensee;

18 (h) remuneration to persons other than
19 directors, officers and key executives exceeding fifty
20 thousand dollars (\$50,000) per year;

21 (i) bonus and profit-sharing
22 arrangements within the holding company or intermediary
23 company;

24 (j) management and service contracts
25 pertaining to the licensee or applicant;

1 (k) options existing or to be created
2 in respect to the company's securities or other interests;

3 (l) balance sheets and profit and loss
4 statements, certified by independent certified public
5 accountants, for not more than the three preceding fiscal
6 years, or, if the holding company or intermediary company has
7 not been in existence more than three years, balance sheets
8 and profit and loss statements from the time of its
9 establishment, together with projections for three years from
10 the time of its establishment;

11 (m) any further financial statements
12 necessary or appropriate to assist the board in making its
13 determinations; and

14 (n) a current annual profit and loss
15 statement, a current annual balance sheet and a copy of the
16 company's most recent federal income tax return within thirty
17 days after the return is filed.

18 B. All holders of five percent or more of the
19 equity security of a holding company or intermediary company
20 shall apply for a finding of suitability.

21 C. The board may in its discretion perform the
22 investigations concerning the officers, directors, key
23 executives, underwriters, security holders, partners,
24 principals, trustees or direct or beneficial owners of any
25 interest in any holding company or intermediary company as it

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1 deems necessary, either at the time of initial registration or
2 at any time thereafter.

3 D. If at any time the board finds that any person
4 owning, controlling or holding with power to vote all or any
5 part of any class of securities of, or any interest in, any
6 holding company or intermediary company is unsuitable to be
7 connected with a licensee, it shall so notify both the
8 unsuitable person and the holding company or intermediary
9 company. The unsuitable person shall immediately offer the
10 securities or other interest to the issuing company for
11 purchase. The company shall purchase the securities or
12 interest offered upon the terms and within the time period
13 ordered by the board.

14 E. Beginning on the date when the board serves
15 notice that a person has been found to be unsuitable pursuant
16 to Subsection D of this section, it is unlawful for the
17 unsuitable person to:

18 (1) receive any dividend or interest upon
19 any securities held in the holding company or intermediary
20 company, or any dividend, payment or distribution of any kind
21 from the holding company or intermediary company;

22 (2) exercise, directly or indirectly or
23 through a proxy, trustee or nominee, any voting right
24 conferred by the securities or interest; or

25 (3) receive remuneration in any form from

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1 the licensee, or from any holding company or intermediary
2 company with respect to that licensee, for services rendered
3 or otherwise.

4 F. A holding company or intermediary company
5 subject to the provisions of Subsection A of this section
6 shall not make any public offering of any of its equity
7 securities unless such public offering has been approved by
8 the board.

9 G. This section does not apply to a holding
10 company or intermediary company that is a publicly traded
11 corporation, the stock of which is traded on recognized stock
12 exchanges, which shall instead comply with the provisions of
13 Section 23 of the Gaming Control Act.

14 Section 23. [NEW MATERIAL] REGISTRATION AND
15 CERTIFICATION OF PUBLICLY TRADED CORPORATIONS. --

16 A. If a company applicant or company licensee is
17 or becomes a publicly traded corporation, it shall register
18 with the board and provide the following information:

19 (1) as of the date the company became a
20 publicly traded corporation, and on any later date when the
21 information changes, the names of all stockholders of record
22 who hold five percent or more of the outstanding shares of any
23 class of equity securities issued by the publicly traded
24 corporation;

25 (2) the names of all officers within thirty

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1 days of their respective appointments;

2 (3) the names of all directors within thirty
3 days of their respective elections or appointments;

4 (4) the organization, financial structure
5 and nature of the businesses the publicly traded corporation
6 operates;

7 (5) the terms, position, rights and
8 privileges of the different classes of securities outstanding
9 as of the date the company became a publicly traded
10 corporation;

11 (6) the terms on which the company's
12 securities were issued during the three years preceding the
13 date on which the company became a publicly traded corporation
14 and the terms on which the publicly traded corporation's
15 securities are to be offered to the public as of the date the
16 company became a publicly traded corporation;

17 (7) the terms and conditions of all
18 outstanding indebtedness and evidence of security pertaining
19 directly or indirectly to the publicly traded corporation;

20 (8) remuneration exceeding fifty thousand
21 dollars (\$50,000) per year paid to persons other than
22 directors, officers and key executives who are actively and
23 directly engaged in the administration or supervision of the
24 gaming activities of the publicly traded corporation;

25 (9) bonus and profit-sharing arrangements

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1 within the publicly traded corporation directly or indirectly
2 relating to its gaming activities;

3 (10) management and service contracts of the
4 corporation pertaining to its gaming activities;

5 (11) options existing or to be created
6 pursuant to its equity securities;

7 (12) balance sheets and profit and loss
8 statements, certified by independent certified public
9 accountants, for not less than the three fiscal years
10 preceding the date the company became a publicly traded
11 corporation;

12 (13) any further financial statements deemed
13 necessary or appropriate by the board; and

14 (14) a description of the publicly traded
15 corporation's affiliated companies and intermediary companies
16 and gaming licenses, permits and approvals held by those
17 entities.

18 B. The board shall consider the following criteria
19 in determining whether to certify a publicly traded
20 corporation:

21 (1) the business history of the publicly
22 traded corporation, including its record of financial
23 stability, integrity and success of its gaming operations in
24 other jurisdictions;

25 (2) the current business activities and

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1 interests of the applicant, as well as those of its officers,
2 promoters, lenders and other sources of financing, or any
3 other persons associated with it;

4 (3) the current financial structure of the
5 publicly traded corporation as well as changes that could
6 reasonably be expected to occur to its financial structure as
7 a consequence of its proposed action;

8 (4) the present and proposed compensation
9 arrangements between the publicly traded corporation and its
10 directors, officers, key executives, securities holders,
11 lenders or other sources of financing;

12 (5) the equity investment, commitment or
13 contribution of present or prospective directors, key
14 executives, investors, lenders or other sources of financing;
15 and

16 (6) the dealings and arrangements,
17 prospective or otherwise, between the publicly traded
18 corporation and its investment bankers, promoters, finders or
19 lenders and other sources of financing.

20 C. The board may issue a certification upon
21 receipt of a proper application and consideration of the
22 criteria set forth in Subsection B of this section if it finds
23 that the certification would not be contrary to the public
24 interest or the policy set forth in the Gaming Control Act.

25 Section 24. [NEW MATERIAL] FINDING OF SUITABILITY

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1 REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES-- REMOVAL
2 FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY
3 BY BOARD. --

4 A. Each officer, director and key executive of a
5 holding company, intermediary company or publicly traded
6 corporation that the board determines is or is to become
7 actively and directly engaged in the administration or
8 supervision of, or any other significant involvement with, the
9 activities of the subsidiary licensee or applicant shall apply
10 for a finding of suitability.

11 B. If any officer, director or key executive of a
12 holding company, intermediary company or publicly traded
13 corporation required to be found suitable pursuant to
14 Subsection A of this section fails to apply for a finding of
15 suitability within thirty days after being requested to do so
16 by the board, or is not found suitable by the board, or if his
17 finding of suitability is revoked after appropriate findings
18 by the board, the holding company, intermediary company or
19 publicly traded corporation shall immediately remove that
20 officer, director or key executive from any office or position
21 in which the person is engaged in the administration or
22 supervision of, or any other involvement with, the activities
23 of the certified subsidiary until the person is thereafter
24 found to be suitable. If the board suspends the finding of
25 suitability of any officer, director or key executive, the

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1 holding company, intermediary company or publicly traded
2 corporation shall immediately and for the duration of the
3 suspension suspend that officer, director or key executive
4 from performance of any duties in which he is actively and
5 directly engaged in the administration or supervision of, or
6 any other involvement with, the activities of the subsidiary
7 licensee.

8 Section 25. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS
9 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY
10 TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--
11 PROHIBITION.--

12 A. Each person who, individually or in association
13 with others, acquires, directly or indirectly, beneficial
14 ownership of five percent or more of any voting securities in
15 a publicly traded corporation registered with the board may be
16 required to be found suitable if the board has reason to
17 believe that the acquisition of the ownership would otherwise
18 be inconsistent with the declared policy of this state.

19 B. Each person who, individually or in association
20 with others, acquires, directly or indirectly, beneficial
21 ownership of five percent or more of any class of voting
22 securities of a publicly traded corporation certified by the
23 board shall notify the board within ten days after acquiring
24 such interest.

25 C. Each person who, individually or in association

1 with others, acquires, directly or indirectly, the beneficial
2 ownership of more than ten percent of any class of voting
3 securities of a publicly traded corporation certified by the
4 board shall apply to the board for a finding of suitability
5 within thirty days after acquiring such interest.

6 D. Institutional investors that have been exempted
7 from or have received a waiver of suitability requirements
8 pursuant to regulations adopted by the board are not required
9 to comply with this section.

10 E. Any person required by the board or by the
11 provisions of this section to be found suitable shall apply
12 for a finding of suitability within thirty days after the
13 board requests that he do so.

14 F. Any person required by the board or the
15 provisions of this section to be found suitable who
16 subsequently is found unsuitable by the board shall not hold
17 directly or indirectly the beneficial ownership of any
18 security of a publicly traded corporation that is registered
19 with the board beyond that period of time prescribed by the
20 board.

21 G. The board may, but is not required to, deem a
22 person qualified to hold a license or to be suitable as
23 required by this section if the person currently holds a valid
24 license or has been found suitable by gaming regulatory
25 authorities in another jurisdiction, provided that the board

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1 finds that the other jurisdiction has conducted a thorough
2 investigation of the applicant and has criteria substantially
3 similar to those of the board to determine when a person is to
4 be found suitable or to obtain a license.

5 Section 26. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE
6 OR TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE
7 OFFICERS AND DIRECTORS--APPROVAL OF BOARD.--

8 A. Before a company licensee, other than a
9 publicly traded corporation, may issue or transfer five
10 percent or more of its securities to any person, it shall file
11 a report of its proposed action with the board, which report
12 shall request the approval of the board. The board shall have
13 ninety days within which to approve or deny the request. If
14 the board fails to act in ninety days, the request is deemed
15 approved. If the board denies the request, the company shall
16 not issue or transfer five percent or more of its securities
17 to the person about whom the request was made.

18 B. A company licensee shall file a report of each
19 change of the corporate officers and directors with the board
20 within thirty days of the change. The board shall have ninety
21 days from the date the report is filed within which to approve
22 or disapprove such change. During the ninety-day period and
23 thereafter, if the board does not disapprove the change, an
24 officer or director is be entitled to exercise all powers of
25 the office to which he was elected or appointed.

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1 C. A company licensee shall report to the board in
2 writing any change in company personnel who have been
3 designated as key executives. The report shall be made no
4 later than thirty days after the change.

5 D. The board may require that a company licensee
6 furnish the board with a copy of its federal income tax return
7 within thirty days after the return is filed with the federal
8 government.

9 Section 27. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
10 GENERAL PROVISIONS--PLAYER AGE LIMIT--RULES FOR PLACEMENT. --

11 A. A gaming operator licensee shall be granted a
12 license to operate a specific number of machines at a gaming
13 establishment identified in the license application and shall
14 be granted a license for each gaming machine.

15 B. A gaming operator licensee who desires to
16 change the number of machines in operation at a gaming
17 establishment shall apply to the board for an amendment to his
18 license authorizing a change in the number of machines.

19 C. Gaming machines may be available for play only
20 in an area restricted to persons twenty-one years of age or
21 older.

22 D. A gaming operator licensee shall erect a
23 permanent physical barrier to allow for multiple uses of the
24 premises by persons of all ages. For purposes of this
25 subsection, "permanent physical barrier" means a floor-to-

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1 ceiling wall separating the general areas from the restricted
2 areas. The entrance to the area where gaming machines are
3 located shall display a sign that the premises are restricted
4 to persons twenty-one years of age or older. Persons under
5 the age of twenty-one shall not enter the area where gaming
6 machines are located.

7 E. A gaming operator licensee shall not have
8 automated teller machines on the premises.

9 F. A gaming operator licensee shall not provide,
10 allow, contract or arrange to provide alcohol or food for no
11 charge or at reduced prices as an incentive or enticement for
12 patrons to game.

13 Section 28. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
14 SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--
15 DAYS AND HOURS OF OPERATIONS. --

16 A. A racetrack licensed by the state racing
17 commission pursuant to the Horse Racing Act to conduct live
18 horse races or simulcast races may be issued a gaming
19 operator's license to operate gaming machines on its premises
20 where live racing is conducted.

21 B. A racetrack's gaming operator's license shall
22 automatically become void if:

23 (1) the racetrack no longer holds an active
24 license to conduct pari-mutuel wagering; or

25 (2) the racetrack fails to maintain a

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1 minimum of four live race days a week during its licensed race
2 meet unless otherwise approved by the board.

3 C. A gaming operator licensee that is a racetrack
4 may have not more than one hundred licensed gaming machines,
5 but the number of gaming machines to be located on the
6 licensee's premises shall be specified in the gaming
7 operator's license.

8 D. Gaming machines on a racetrack gaming operator
9 licensee's premises may be played only on days when the
10 racetrack conducts live horse races or simulcast races and
11 during times established by regulation of the board, but the
12 regulations shall provide for a maximum of twelve hours a day.

13 Section 29. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
14 SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS-- NUMBER OF
15 GAMING MACHINES-- DAYS AND HOURS OF OPERATIONS. --

16 A. A nonprofit organization may be issued a gaming
17 operator's license to operate licensed gaming machines on its
18 premises.

19 B. A nonprofit gaming operator licensee may offer
20 for play five gaming machines for each one hundred members of
21 that organization, but no more than twenty-five gaming
22 machines may be offered for play on the premises of a
23 nonprofit organization gaming operator licensee.

24 C. No gaming machine on the premises of a
25 nonprofit organization having a gaming operator's license may

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1 award a prize that exceeds one thousand dollars (\$1,000).

2 D. Gaming machines may be played on the premises
3 of a nonprofit organization gaming operator licensee 12:00
4 noon until 12:00 midnight every day.

5 E. A nonprofit organization gaming operator licensee
6 shall permit only members of that organization and bona fide
7 guests of those members to use or play video gaming machines on
8 the premises of the gaming operator licensee.

9 F. A nonprofit organization gaming operator licensee,
10 after deducting expenses of that organization from the net take,
11 shall distribute the amount of net take remaining to fulfill the
12 purposes of the nonprofit organization or to organizations with
13 at least one office located in New Mexico that are described in
14 Section 501(c)(3) of the federal Internal Revenue Code of 1986
15 and have received an exemption from payment of federal income
16 taxes pursuant to Section 501(a) of that act.

17 G. A nonprofit organization gaming operator licensee
18 shall submit an accounting of distributions made pursuant to
19 Subsection F of this section to the board by December 31 of each
20 calendar year.

21 Section 30. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF
22 GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

23 A. It is unlawful for any person to operate, carry
24 on, conduct or maintain any form of manufacturing of any
25 gaming device or associated equipment for use or play in New

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1 Mexico or any form of manufacturing of any gaming device or
2 associated equipment in New Mexico for use or play outside of
3 New Mexico without first obtaining and maintaining a
4 manufacturer's license.

5 B. If the board revokes a manufacturer's license:

6 (1) no new gaming device manufactured by the
7 person may be approved for use in this state;

8 (2) any previously approved gaming device
9 manufactured by the person is subject to revocation of
10 approval if the reasons for the revocation of the license also
11 apply to that gaming device;

12 (3) no new gaming device or associated
13 equipment made by the manufacturer may be distributed, sold,
14 transferred or offered for use or play in New Mexico; and

15 (4) any association or agreement between the
16 manufacturer and a distributor licensee or gaming operator
17 licensee in New Mexico shall be terminated.

18 C. An agreement between a manufacturer licensee
19 and a distributor licensee or a gaming operator licensee in
20 New Mexico shall be deemed to include a provision for its
21 termination without liability for the termination on the part
22 of either party upon a finding by the board that either party
23 is unsuitable. Failure to include that condition in the
24 agreement is not a defense in any action brought pursuant to
25 this section to terminate the agreement.

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1 D. A gaming device shall not be used and offered
2 for play by a gaming operator licensee unless it is identical
3 in all material aspects to a model that has been specifically
4 tested and approved by:

- 5 (1) the board; or
- 6 (2) a laboratory selected by the board.

7 E. The board may inspect every gaming device that
8 is manufactured:

- 9 (1) for use in New Mexico; or
- 10 (2) in New Mexico for use outside of New
11 Mexico.

12 F. The board may inspect every gaming device that
13 is offered for play within New Mexico by a gaming operator
14 licensee.

15 G. The board may inspect all associated equipment
16 that is manufactured and sold for use in New Mexico or
17 manufactured in New Mexico for use outside of New Mexico.

18 H. In addition to all other fees and charges
19 imposed pursuant to the Gaming Control Act, the board may
20 determine, charge and collect from each manufacturer an
21 inspection fee, which shall not exceed the actual cost of
22 inspection and investigation.

23 I. The board may prohibit the use of a gaming
24 device by a gaming operator licensee if it finds that the
25 gaming device does not meet the requirements of this section.

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1 Section 31. [NEW MATERIAL] LICENSING OF DISTRIBUTORS
2 OF GAMING DEVICES. --

3 A. It is unlawful for any person to operate, carry
4 on, conduct or maintain any form of distribution of any gaming
5 device for use or play in New Mexico without first obtaining
6 and maintaining a distributor's or manufacturer's license.

7 B. If the board revokes a distributor's license:

8 (1) no new gaming device distributed by the
9 person may be approved;

10 (2) any previously approved gaming device
11 distributed by the distributor is subject to revocation of
12 approval if the reasons for the revocation of the license also
13 apply to that gaming device;

14 (3) no new gaming device or associated
15 equipment distributed by the distributor may be distributed,
16 sold, transferred or offered for use or play in New Mexico;
17 and

18 (4) any association or agreement between the
19 distributor and a gaming operator licensee shall be
20 terminated. An agreement between a distributor licensee and a
21 gaming operator licensee shall be deemed to include a
22 provision for its termination without liability on the part of
23 either party upon a finding by the board that the other party
24 is unsuitable. Failure to include that condition in the
25 agreement is not a defense in any action brought pursuant to

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1 this section to terminate the agreement.

2 C. The board may inspect every gaming device that
3 is distributed for use in New Mexico.

4 D. In addition to all other fees and charges
5 imposed by the Gaming Control Act, the board may determine,
6 charge and collect from each distributor an inspection fee,
7 which shall not exceed the actual cost of inspection and
8 investigation.

9 Section 32. [NEW MATERIAL] CERTIFICATION OF
10 SUITABILITY OF CERTAIN PERSONS FURNISHING SERVICES OR PROPERTY
11 OR DOING BUSINESS WITH GAMING OPERATORS-- TERMINATION OF
12 ASSOCIATION. --

13 A. The board may determine the suitability of any
14 person who furnishes services or property to a gaming operator
15 licensee under any arrangement pursuant to which the person
16 receives compensation based on earnings, profits or receipts
17 from gaming. The board may require the person to comply with
18 the requirements of the Gaming Control Act and with the
19 regulations of the board. If the board determines that the
20 person is unsuitable, it may require the arrangement to be
21 terminated.

22 B. The board may require a person to apply for a
23 finding of suitability to be associated with a gaming operator
24 licensee if the person:

25 (1) does business on the premises of a

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1 gaming establishment; or

2 (2) provides any goods or services to a
3 gaming operator licensee for compensation that the board finds
4 to be grossly disproportionate to the value of the goods or
5 services.

6 C. If the board determines that a person is
7 unsuitable to be associated with a gaming operator licensee,
8 the association shall be terminated. Any agreement that
9 entitles a business other than gaming to be conducted on the
10 premises of a gaming establishment, or entitles a person other
11 than a licensee to conduct business with the gaming operator
12 licensee, is subject to termination upon a finding of
13 unsuitability of the person seeking association with a gaming
14 operator licensee. Every agreement shall be deemed to include
15 a provision for its termination without liability on the part
16 of the gaming operator licensee upon a finding by the board of
17 the unsuitability of the person seeking or having an
18 association with the gaming operator licensee. Failure to
19 include that condition in the agreement is not a defense in
20 any action brought pursuant to this section to terminate the
21 agreement. If the application is not presented to the board
22 within thirty days following demand or the unsuitable
23 association is not terminated, the board may pursue any remedy
24 or combination of remedies provided in the Gaming Control Act.

25 D. The board may issue a certification to a person

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1 found suitable pursuant to this section.

2 Section 33. [NEW MATERIAL] REASONS FOR INVESTIGATIONS
3 BY BOARD-- COMPLAINT BY BOARD-- BOARD TO APPOINT HEARING
4 EXAMINER-- REVIEW BY BOARD-- ORDER OF BOARD. --

5 A. The board shall make appropriate investigations
6 to:

7 (1) determine whether there has been any
8 violation of the Gaming Control Act or of any regulations
9 adopted pursuant to that act;

10 (2) determine any facts, conditions,
11 practices or matters that it deems necessary or proper to aid
12 in the enforcement of the Gaming Control Act or regulations
13 adopted pursuant to that act;

14 (3) aid in adopting regulations;

15 (4) secure information as a basis for
16 recommending legislation relating to the Gaming Control Act;
17 or

18 (5) determine whether a licensee is able to
19 meet its financial obligations, including all financial
20 obligations imposed by the Gaming Control Act, as they become
21 due.

22 B. If after an investigation the board is
23 satisfied that a license, registration, finding of suitability
24 or prior approval by the board of any transaction for which
25 approval was required by the provisions of the Gaming Control

1 Act should be limited, conditioned, suspended or revoked, or
2 that a fine should be levied, the board shall initiate a
3 hearing by filing a complaint and transmitting a copy of it to
4 the licensee, together with a summary of evidence in its
5 possession bearing on the matter and the transcript of
6 testimony at any investigative hearing conducted by or on
7 behalf of the board. The complaint shall be a written
8 statement of charges that sets forth in ordinary and concise
9 language the acts or omissions with which the respondent is
10 charged. It shall specify the statutes or regulations that
11 the respondent is alleged to have violated but shall not
12 consist merely of charges raised in the language of the
13 statutes or regulations. The summary of the evidence shall be
14 confidential and made available only to the respondent until
15 such time as it is offered into evidence at any public hearing
16 on the matter.

17 C. The respondent shall file an answer within
18 thirty days after service of the complaint.

19 D. Upon filing the complaint the board shall
20 appoint a hearing examiner to conduct further proceedings.

21 E. The hearing examiner shall conduct proceedings
22 in accordance with the Gaming Control Act and the regulations
23 adopted by the board. At the conclusion of the proceedings,
24 the hearing examiner may recommend that the board take any
25 appropriate action, including revocation, suspension,

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1 limitation or conditioning of a license or imposition of a
2 fine not to exceed fifty thousand dollars (\$50,000) for each
3 violation.

4 F. The hearing examiner shall prepare a written
5 decision containing his recommendation to the board and shall
6 serve it on all parties. Any respondent who disagrees with
7 the hearing examiner's recommendation may request the board,
8 within ten days of service of the recommendation, to review
9 the recommendation.

10 G. Upon proper request, the board shall review the
11 recommendation. The board may remand the case to the hearing
12 examiner for the presentation of additional evidence upon a
13 showing of good cause why such evidence could not have been
14 presented at the previous hearing.

15 H. The board shall by a majority vote accept,
16 reject or modify the recommendation.

17 I. If the board limits, conditions, suspends or
18 revokes any license or imposes a fine or limits, conditions,
19 suspends or revokes any registration, finding of suitability
20 or prior approval, it shall issue a written order specifying
21 its action.

22 J. The board's order is effective unless and until
23 reversed upon judicial review, except that the board may stay
24 its order pending a rehearing or judicial review upon such
25 terms and conditions as it deems proper.

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1 Section 34. [NEW MATERIAL] EMERGENCY ORDERS OF
2 BOARD. --The board may issue an emergency order for suspension,
3 limitation or conditioning of a license, registration, finding
4 of suitability or work permit or may issue an emergency order
5 requiring a gaming operator licensee to exclude an individual
6 licensee from the premises of the gaming operator licensee's
7 gaming establishment or not to pay an individual licensee any
8 remuneration for services or any profits, income or accruals
9 on his investment in the licensed gaming establishment in the
10 following manner:

11 A. an emergency order may be issued only when the
12 board believes that:

13 (1) a licensee has willfully failed to
14 report, pay or truthfully account for and pay over any fee
15 imposed by the provisions of the Gaming Control Act or
16 willfully attempted in any manner to evade or defeat any fee
17 or payment thereof;

18 (2) a licensee or gaming employee has
19 cheated at a game; or

20 (3) the emergency order is necessary for the
21 immediate preservation of the public peace, health, safety,
22 morals, good order or general welfare;

23 B. the emergency order shall set forth the grounds
24 upon which it is issued, including a statement of facts
25 constituting the alleged emergency necessitating such action;

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1 C. the emergency order is effective immediately
2 upon issuance and service upon the licensee or resident agent
3 of the licensee or gaming employee or, in cases involving
4 registration or findings of suitability, upon issuance and
5 service upon the person or entity involved or resident agent
6 of the entity involved; the emergency order may suspend,
7 limit, condition or take other action in relation to the
8 license of one or more persons in an operation without
9 affecting other individual licensees or the gaming operator
10 licensee. The emergency order remains effective until further
11 order of the board or final disposition of the case; and

12 D. within five days after issuance of an emergency
13 order, the board shall cause a complaint to be filed and
14 served upon the person or entity involved; thereafter, the
15 person or entity against whom the emergency order has been
16 issued and served is entitled to a hearing before the board
17 and to judicial review of the decision and order of the board
18 in accordance with the provisions of the board's regulations.

19 Section 35. [NEW MATERIAL] EXCLUSION OR EJECTION OF
20 CERTAIN PERSONS FROM GAMING ESTABLISHMENTS-- PERSONS
21 INCLUDED. --

22 A. The board shall by regulation provide for the
23 establishment of a list of persons who are to be excluded or
24 ejected from a gaming establishment. The list may include any
25 person whose presence in the gaming establishment is

1 determined by the board to pose a threat to the public
2 interest or licensed gaming activities.

3 B. In making the determination in Subsection A of
4 this section, the board may consider a:

5 (1) prior conviction for a crime that is a
6 felony under state or federal law, a crime involving moral
7 turpitude or a violation of the gaming laws of any
8 jurisdiction;

9 (2) violation or conspiracy to violate the
10 provisions of the Gaming Control Act relating to:

11 (a) the failure to disclose an interest
12 in a gaming activity for which the person must obtain a
13 license; or

14 (b) willful evasion of fees or taxes;

15 (3) notorious or unsavory reputation that
16 would adversely affect public confidence and trust that the
17 gaming industry is free from criminal or corruptive
18 influences; or

19 (4) written order of any other governmental
20 agency in this state or any other state that authorizes the
21 exclusion or ejection of the person from an establishment at
22 which gaming is conducted.

23 C. A gaming operator licensee has the right,
24 without a list established by the board, to exclude or eject a
25 person from its gaming establishment who poses a threat to the

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1 public interest or for any business reason.

2 D. Race, color, creed, national origin or
3 ancestry, age, disability or sex shall not be grounds for
4 placing the name of a person on the list or for exclusion or
5 ejection under Subsection A or C of this section.

6 Section 36. [NEW MATERIAL] INTERNAL CONTROL SYSTEMS. --

7 A. Each gaming operator licensee shall adopt
8 internal control systems that shall include provisions for:

9 (1) safeguarding its assets and revenues,
10 especially the recording of cash and evidences of
11 indebtedness;

12 (2) making and maintaining reliable records,
13 accounts and reports of transactions, operations and events,
14 including reports to the board; and

15 (3) a system by which the amount wagered on
16 each gaming machine and the amount paid out by each gaming
17 machine is recorded on a daily basis, which results may be
18 obtained by the board by appropriate means as described in
19 regulations adopted by the board; all manufacturers are
20 required to have such a system available for gaming operators
21 for the gaming machines that it supplies for use in New
22 Mexico, and all distributors shall make such a system
23 available to gaming operators.

24 B. The internal control system shall be designed
25 to reasonably ensure that:

- 1 (1) assets are safeguarded;
- 2 (2) financial records are accurate and
- 3 reliable;
- 4 (3) transactions are performed only in
- 5 accordance with management's general or specific
- 6 authorization;
- 7 (4) transactions are recorded adequately to
- 8 permit proper reporting of gaming revenue and of fees and
- 9 taxes and to maintain accountability of assets;
- 10 (5) access to assets is allowed only in
- 11 accordance with management's specific authorization;
- 12 (6) recorded accountability for assets is
- 13 compared with actual assets at reasonable intervals and
- 14 appropriate action is taken with respect to any discrepancies;
- 15 and
- 16 (7) functions, duties and responsibilities
- 17 are appropriately segregated and performed in accordance with
- 18 sound accounting and management practices by competent,
- 19 qualified personnel.

20 C. A gaming operator licensee and an applicant for

21 a gaming operator's license shall describe, in the manner the

22 board may approve or require, its administrative and

23 accounting procedures in detail in a written system of

24 internal control. A gaming operator licensee and an applicant

25 for a gaming operator's license shall submit a copy of its

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1 written system to the board. Each written system shall
2 include:

3 (1) an organizational chart depicting
4 appropriate segregation of functions and responsibilities;

5 (2) a description of the duties and
6 responsibilities of each position shown on the organizational
7 chart;

8 (3) a detailed, narrative description of the
9 administrative and accounting procedures designed to satisfy
10 the requirements of Subsection A of this section;

11 (4) a written statement signed by the
12 licensee's chief financial officer and either the licensee's
13 chief executive officer or a licensed owner attesting that the
14 system satisfies the requirements of this section;

15 (5) if the written system is submitted by an
16 applicant, a letter from an independent certified public
17 accountant stating that the applicant's written system has
18 been reviewed by the accountant and complies with the
19 requirements of this section; and

20 (6) other items as the board may require.

21 D. The board shall adopt and publish minimum
22 standards for internal control procedures.

23 Section 37. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE
24 OF WORK PERMITS--REVOCATION OF WORK PERMITS.--

25 A. A person shall not be employed as a gaming

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1 employee unless the person holds a valid work permit issued by
2 the board.

3 B. A work permit shall be issued and may be
4 revoked by the board as provided in regulations adopted by the
5 board.

6 C. Any person whose work permit has been denied or
7 revoked may seek judicial review.

8 Section 38. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS
9 AND GAMING EMPLOYEES. --A person under the age of twenty-one
10 years shall not:

11 A. play, be allowed to play, place wagers on or
12 collect winnings from, whether personally or through an agent,
13 any game authorized or offered for play pursuant to the Gaming
14 Control Act; or

15 B. be employed as a gaming employee.

16 Section 39. [NEW MATERIAL] CALCULATION OF NET TAKE--
17 CERTAIN EXPENSES NOT DEDUCTIBLE. --In calculating net take from
18 gaming machines, the actual cost to the licensee of any
19 personal property distributed to a patron as the result of a
20 legitimate wager may be deducted as a loss, except for travel
21 expenses, food, refreshments, lodging or services. For the
22 purposes of this section, "as the result of a legitimate
23 wager" means that the patron must make a wager prior to
24 receiving the personal property, regardless of whether the
25 receipt of the personal property is dependent on the outcome

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1 of the wager.

2 Section 40. [NEW MATERIAL] LIMITATIONS ON TAXES AND
3 LICENSE FEES. -- A political subdivision of the state shall not
4 impose a license fee or tax on any licensee licensed pursuant
5 to the Gaming Control Act except for the imposition of
6 property taxes.

7 Section 41. [NEW MATERIAL] USE OF CHIPS, TOKENS OR
8 LEGAL TENDER REQUIRED FOR ALL GAMING. -- All gaming shall be
9 conducted with chips, tokens or other similar objects approved
10 by the board or with the legal currency of the United States.

11 Section 42. [NEW MATERIAL] COMMUNICATION OR DOCUMENT
12 OF APPLICANT OR LICENSEE ABSOLUTELY PRIVILEGED-- PRIVILEGE NOT
13 WAIVED-- DISCLOSURE OF PRIVILEGED INFORMATION PROHIBITED. --

14 A. Any communication or document of an applicant
15 or licensee is absolutely privileged and does not impose
16 liability for defamation or constitute a ground for recovery
17 in any civil action if it is required by:

18 (1) law or the regulations of the board; or

19 (2) a subpoena issued by the board to be
20 made or transmitted to the board.

21 B. The privilege created pursuant to Subsection A
22 of this section is not waived or lost because the document or
23 communication is disclosed to the board.

24 C. Notwithstanding the powers granted to the board
25 by the Gaming Control Act, the board:

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1 (1) shall not release or disclose any
2 privileged information, documents or communications provided
3 by an applicant or licensee without the prior written consent
4 of the applicant or licensee or pursuant to a lawful court
5 order after timely notice of the proceedings has been given to
6 the applicant or licensee;

7 (2) shall maintain all privileged
8 information, documents and communications in a secure place
9 accessible only to members of the board; and

10 (3) shall adopt procedures and regulations
11 to protect the privileged nature of information, documents and
12 communications provided by an applicant or licensee.

13 Section 43. [NEW MATERIAL] MOTION FOR RELEASE OF
14 PRIVILEGED INFORMATION. --An application to a court for an
15 order requiring the board to release any information declared
16 by law to be confidential shall be made only by petition in
17 district court. A hearing shall be held on the petition not
18 less than ten days and not more than twenty days after the
19 date of service of the petition on the board, the attorney
20 general and all persons who may be affected by the entry of
21 that order. A copy of the petition, all papers filed in
22 support of it and a notice of hearing shall be served.

23 Section 44. [NEW MATERIAL] GAMING MACHINE CENTRAL
24 SYSTEM --The board shall develop and operate a central system
25 into which all licensed gaming machines are connected. The

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1 central system shall be capable of:

2 A. monitoring continuously, retrieving and
3 auditing the operations, financial data and program
4 information of the network;

5 B. disabling from operation or play any gaming
6 machine in the network that does not comply with the
7 provisions of the Gaming Control Act or the regulations of the
8 board;

9 C. communicating, through program modifications or
10 other means equally effective, with all gaming machines
11 licensed by the board;

12 D. interacting, reading, communicating and linking
13 with gaming machines from a broad spectrum of manufacturers
14 and associated equipment; and

15 E. providing linkage to each gaming machine in the
16 network at a reasonable and affordable cost to the state or
17 the gaming operator licensee and allowing for program
18 modifications and system updating at a reasonable rate of
19 cost.

20 Section 45. [NEW MATERIAL] MACHINE SPECIFICATIONS. -- To
21 be eligible for licensure, each gaming machine shall meet all
22 specifications established by regulations of the board and:

23 A. be unable to be manipulated in a manner that
24 affects the random probability of winning plays or in any
25 other manner determined by the board to be undesirable;

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1 B. have at least one mechanism that accepts coins
2 or currency, but does not accept bills of denominations
3 greater than twenty dollars (\$20.00);

4 C. be capable of having play suspended through the
5 central system by an administrator until the administrator
6 resets the gaming machine;

7 D. house nonresettable mechanical and electronic
8 meters within a readily accessible locked area of the gaming
9 machine that maintain a permanent record of all money inserted
10 into the machine, all cash payouts of winnings, all refunds of
11 winnings, all credits played for additional games and all
12 credits won by players;

13 E. have a printing mechanism capable of printing
14 out, at the request of an administrator, readings on the
15 electronic meters of the machine;

16 F. be capable of printing a ticket voucher stating
17 the value of a cash prize won by the player at the completion
18 of each game, the date and time of day the game was played in
19 a twenty-four-hour format showing hours and minutes, the
20 machine serial number, the sequential number of the ticket
21 voucher and an encrypted validation number for determining the
22 validity of a winning ticket voucher;

23 G. be capable of being linked to the board's
24 central system for the purpose of being monitored continuously
25 as required by the board;

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1 H. provide for a payback value for each credit
2 wagered, determined over time, of not less than eighty percent
3 or more than ninety-six percent;

4 I. offer only games authorized and examined by the
5 board; and

6 J. display the gaming machine license issued for
7 that machine in an easily accessible place, before and during
8 the time that a machine is available for use.

9 Section 46. [NEW MATERIAL] POSTING OF GAMING MACHINE
10 ODDS. --The odds of winning on each gaming machine shall be
11 posted on or near each gaming machine. The board shall
12 provide the manner in which the odds shall be determined and
13 posted by regulation.

14 Section 47. [NEW MATERIAL] EXAMINATION OF GAMING
15 DEVICES-- COST ALLOCATION. --

16 A. The board shall examine prototypes of gaming
17 devices of manufacturers seeking a license as required.

18 B. The board by regulation shall require a
19 manufacturer to pay the anticipated actual costs of the
20 examination of a gaming device in advance and, after the
21 completion of the examination, shall refund overpayments or
22 charge and collect amounts sufficient to reimburse the board
23 for underpayment of actual costs.

24 C. The board may contract for the examination of
25 gaming devices to meet the requirements of this section.

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1 Section 48. [NEW MATERIAL] GAMING TAX--IMPOSITION--
2 ADMINISTRATION.--

3 A. An excise tax is imposed on the privilege of
4 conducting gaming in the state. This tax shall be known as
5 the "gaming tax".

6 B. The gaming tax is measured as a percentage of
7 net take of every gaming operator licensee. The rate of the
8 tax is fifteen percent.

9 C. The gaming tax imposed on a gaming operator
10 licensee is in lieu of all state and local gross receipts
11 taxes on that net take.

12 D. The gaming tax shall be administered and
13 collected by the taxation and revenue department in
14 cooperation with the board. The provisions of the Tax
15 Administration Act apply to the collection and administration
16 of the tax.

17 Section 49. [NEW MATERIAL] CIVIL ACTIONS TO RESTRAIN
18 VIOLATIONS OF GAMING CONTROL ACT.--

19 A. The attorney general, at the request of the
20 board, may institute a civil action in any court of this state
21 against any person to enjoin a violation of a prohibitory
22 provision of the Gaming Control Act.

23 B. An action brought against a person pursuant to
24 this section shall not preclude a criminal action or
25 administrative proceeding against that person.

1 Section 50. [NEW MATERIAL] TESTIMONIAL IMMUNITY. --

2 A. The board may order a person to answer a
3 question or produce evidence and confer immunity pursuant to
4 this section. If, in the course of an investigation or
5 hearing conducted pursuant to the Gaming Control Act, a person
6 refuses to answer a question or produce evidence on the ground
7 that he will be exposed to criminal prosecution by doing so,
8 then the board may by approval of three members, after the
9 written approval of the attorney general, issue an order to
10 answer or to produce evidence with immunity.

11 B. If a person complies with an order issued
12 pursuant to Subsection A of this section, he shall be immune
13 from having a responsive answer given or responsive evidence
14 produced, or evidence derived from either, used to expose him
15 to criminal prosecution, except that the person may be
16 prosecuted for any perjury committed in the answer or
17 production of evidence and may also be prosecuted for contempt
18 for failing to act in accordance with the order of the board.
19 An answer given or evidence produced pursuant to the grant of
20 immunity authorized by this section may be used against the
21 person granted immunity in a prosecution of the person for
22 perjury or a proceeding against him for contempt.

23 Section 51. [NEW MATERIAL] CRIME- -MANIPULATION OF GAMING
24 DEVICE WITH INTENT TO CHEAT. --A person who manipulates, with the
25 intent to cheat, any component of a gaming device in a manner

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1 contrary to the designed and normal operational purpose of the
2 component, including varying the pull of the handle of a slot
3 machine with knowledge that the manipulation affects the outcome
4 of the game or with knowledge of any event that affects the
5 outcome of the game, is guilty of a fourth degree felony and
6 shall be sentenced pursuant to the provisions of Section 31-18-15
7 NMSA 1978.

8 Section 52. [NEW MATERIAL] CRIME--USE OF COUNTERFEIT OR
9 UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN
10 DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

11 A. A person who, in playing any game designed to be
12 played with, to receive or to be operated by tokens approved by
13 the board or by lawful currency of the United States, knowingly
14 uses tokens other than those approved by the board, uses currency
15 that is not lawful currency of the United States or uses currency
16 not of the same denomination as the currency intended to be used
17 in that game is guilty of a third degree felony and shall be
18 sentenced pursuant to the provision of Section 31-18-15 NMSA
19 1978.

20 B. A person who knowingly has on his person or in his
21 possession within a gaming establishment any device intended to
22 be used by him to violate the provisions of the Gaming Control
23 Act is guilty of a third degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978.

25 C. A person, other than a duly authorized employee of

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1 a gaming operator acting in furtherance of his employment within
2 a gaming establishment, who knowingly has on his person or in his
3 possession within a gaming establishment any key or device known
4 by him to have been designed for the purpose of and suitable for
5 opening, entering or affecting the operation of any game, dropbox
6 or electronic or mechanical device connected to the game or for
7 removing money or other contents from them is guilty of a third
8 degree felony and shall be sentenced pursuant to the provisions
9 of Section 31-18-15 NMSA 1978.

10 D. A person who knowingly and with intent to use them
11 for cheating has on his person or in his possession any
12 paraphernalia for manufacturing slugs is guilty of a third degree
13 felony and shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978. As used in this subsection,
15 "paraphernalia for manufacturing slugs" means the equipment,
16 products and materials that are intended for use or designed for
17 use in manufacturing, producing, fabricating, preparing, testing,
18 analyzing, packaging, storing or concealing a counterfeit
19 facsimile of tokens approved by the board or a lawful coin of the
20 United States, the use of which is unlawful pursuant to the
21 Gaming Control Act. The term includes:

- 22 (1) lead or lead alloy;
23 (2) molds, forms or similar equipment capable
24 of producing a likeness of a gaming token or coin;
25 (3) melting pots or other receptacles;

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- 1 (4) torches; and
- 2 (5) tongs, trimming tools or other similar
- 3 equipment.

4 E. Possession of more than two items of the
5 equipment, products or material described in Subsection D of this
6 section permits a rebuttable inference that the possessor
7 intended to use them for cheating.

8 Section 53. [NEW MATERIAL] CRIME--CHEATING.--A person who
9 knowingly cheats at any game is guilty of a fourth degree felony
10 and upon conviction shall be sentenced pursuant to the provisions
11 of Section 31-18-15 NMSA 1978.

12 Section 54. [NEW MATERIAL] CRIME--POSSESSION OF GAMING
13 DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW.--A
14 person who knowingly possesses any gaming device that has been
15 manufactured, sold or distributed in violation of the Gaming
16 Control Act is guilty of a fourth degree felony and shall be
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA
18 1978.

19 Section 55. [NEW MATERIAL] CRIME--REPORTING AND RECORD
20 VIOLATIONS--PENALTY.--A person who, in an application, in a book
21 or record required to be maintained by the Gaming Control Act or
22 by a regulation adopted under that act or in a report required to
23 be submitted by that act or a regulation adopted under that act,
24 knowingly makes a statement or entry that is false or misleading
25 or fails to maintain or make an entry the person knows is

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1 required to be maintained or made is guilty of a fourth degree
2 felony and shall be sentenced in accordance with Section 31-18-15
3 NMSA 1978.

4 Section 56. [NEW MATERIAL] CRIME--UNLAWFUL MANUFACTURE,
5 SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES
6 ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY.--

7 A. A person who manufactures, sells or distributes a
8 device that is intended by him to be used to violate any
9 provision of the Gaming Control Act is guilty of a fourth degree
10 felony and shall be sentenced in accordance with Section 31-18-15
11 NMSA 1978.

12 B. A person who marks, alters or otherwise modifies
13 any gaming device in a manner that affects the result of a wager
14 by determining win or loss or alters the normal criteria of
15 random selection that affects the operation of a game or that
16 determines the outcome of a game is guilty of a fourth degree
17 felony and shall be sentenced in accordance with Section 31-18-15
18 NMSA 1978.

19 Section 57. [NEW MATERIAL] UNDERAGE GAMING--PENALTY FOR
20 PERMITTING OR PARTICIPATION.--

21 A. A person who knowingly permits an individual who
22 the person knows is younger than twenty-one years of age to
23 participate in gaming is guilty of a misdemeanor and shall be
24 sentenced pursuant to the provisions of Section 31-19-1 NMSA
25 1978.

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1 B. An individual who participates in gaming when he
2 is younger than twenty-one years of age at the time of
3 participation is guilty of a misdemeanor and shall be sentenced
4 pursuant to the provisions of Section 31-19-1 NMSA 1978.

5 Section 58. [NEW MATERIAL] CRIME--GENERAL PENALTIES FOR
6 VIOLATION OF ACT.--A person who willfully violates, attempts to
7 violate or conspires to violate any of the provisions of the
8 Gaming Control Act specifying prohibited acts, the classification
9 of which is not specifically stated in that act, is guilty of a
10 misdemeanor and shall be sentenced pursuant to the provisions of
11 Section 31-19-1 NMSA 1978.

12 Section 59. [NEW MATERIAL] DETENTION AND QUESTIONING OF A
13 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--
14 POSTING OF NOTICE.--

15 A. A gaming operator licensee or its officers,
16 employees or agents may question a person in its gaming
17 establishment suspected of violating any of the provisions of the
18 Gaming Control Act. No gaming operator licensee or any of its
19 officers, employees or agents is criminally or civilly liable:

- 20 (1) on account of any such questioning; or
21 (2) for reporting to the board or law
22 enforcement authorities the person suspected of the violation.

23 B. A gaming operator licensee or any of its officers,
24 employees or agents who has reasonable cause for believing that
25 there has been a violation of the Gaming Control Act in the

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1 gaming establishment by a person may detain that person in the
2 gaming establishment in a reasonable manner and for a reasonable
3 length of time. Such a detention does not render the gaming
4 operator licensee or his officers, employees or agents criminally
5 or civilly liable unless it is established by clear and
6 convincing evidence detention was unreasonable under the
7 circumstances.

8 C. No gaming operator licensee or its officers,
9 employees or agents are entitled to the immunity from liability
10 provided for in Subsection B of this section unless there is
11 displayed in a conspicuous place in the gaming establishment a
12 notice in boldface type clearly legible and in substantially this
13 form:

14 "Any gaming operator licensee or any of his officers,
15 employees or agents who have reasonable cause for
16 believing that any person has violated any provision
17 of the Gaming Control Act prohibiting cheating in
18 gaming may detain that person in the establishment."

19 Section 60. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD
20 ACTION. --

21 A. Any person aggrieved by an action taken by the
22 board or one of its agents may request and receive a hearing for
23 the purpose of reviewing the action. To obtain a hearing the
24 aggrieved person shall file a request for hearing with the board
25 within thirty days after the date the action is taken. Failure

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1 to file the request within the specified time is an irrevocable
2 waiver of the right to a hearing, and the action complained of
3 shall be final with no further right to review, either
4 administratively or by a court.

5 B. The board shall adopt procedural regulations to
6 govern the procedures to be followed in administrative hearings
7 pursuant to the provisions of this section. At a minimum, the
8 regulations shall provide:

- 9 (1) for the hearings to be public;
- 10 (2) for the appointment of a hearing officer to
11 conduct the hearing and make his recommendation to the board not
12 more than ten days after the completion of the hearing;
- 13 (3) procedures for discovery;
- 14 (4) assurance that procedural due process
15 requirements are satisfied;
- 16 (5) for the maintenance of a record of the
17 hearing proceedings and assessment of costs of any transcription
18 of testimony that is required for judicial review purposes; and
19 (6) for the hearing to be held in Santa Fe for
20 enforcement hearings and hearings on actions of statewide
21 application, and to be held in the place or area affected for
22 enforcement hearings and hearings on actions of limited local
23 concern.

24 C. Actions taken by the board after a hearing
25 pursuant to the provisions of this section shall be:

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1 (1) written and shall state the reasons for the
2 action;

3 (2) made public when taken;

4 (3) communicated to all persons who have made a
5 written request for notification of the action taken; and

6 (4) taken not more than thirty days after the
7 submission of the hearing officer's report to the board.

8 Section 61. [NEW MATERIAL] JUDICIAL REVIEW OF
9 ADMINISTRATIVE ACTIONS. --

10 A. Any person adversely affected by an action taken
11 by the board after review pursuant to the provisions of Section
12 60 of the Gaming Control Act may appeal the action to the court
13 of appeals. The appeal shall be on the record made at the
14 hearing. To support his appeal, the appellant shall make
15 arrangements with the board for a sufficient number of
16 transcripts of the record of the hearing on which the appeal is
17 based. The appellant shall pay for the preparation of the
18 transcripts.

19 B. On appeal, the court of appeals shall set aside
20 the administrative action only if it is found to be:

21 (1) arbitrary, capricious or an abuse of
22 discretion;

23 (2) not supported by substantial evidence in
24 the whole record; or

25 (3) otherwise not in accordance with law.

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1 Section 62. Section 7-1-2 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 2, as amended) is amended to read:

3 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies
4 to and governs:

5 A. the administration and enforcement of the
6 following taxes or tax acts as they now exist or may hereafter be
7 amended:

8 (1) Income Tax Act;
9 (2) Withholding Tax Act;
10 (3) Gross Receipts and Compensating Tax Act and
11 any state gross receipts tax;

12 (4) Liquor Excise Tax Act;

13 (5) Local Liquor Excise Tax Act;

14 [~~(6)~~] ~~Banking and Financial Corporations Tax~~
15 ~~Act;~~

16 [~~(7)~~] (6) any municipal local option gross
17 receipts tax;

18 [~~(8)~~] (7) any county local option gross
19 receipts tax;

20 [~~(9)~~] (8) Special Fuels Supplier Tax Act;

21 [~~(10)~~] (9) Gasoline Tax Act;

22 [~~(11)~~] (10) petroleum products loading fee,
23 which fee shall be considered a tax for the purpose of the Tax
24 Administration Act;

25 [~~(12)~~] (11) Alternative Fuel Tax Act;

1 [~~(13)~~] (12) Cigarette Tax Act;
2 [~~(14)~~] (13) Estate Tax Act;
3 [~~(15)~~] (14) Railroad Car Company Tax Act;
4 [~~(16)~~] (15) Investment Credit Act;
5 [~~(17)~~] (16) Corporate Income and Franchise Tax
6 Act;
7 [~~(18)~~] (17) Uniform Division of Income for Tax
8 Purposes Act;
9 [~~(19)~~] (18) Multistate Tax Compact;
10 [~~(20)~~] (19) Tobacco Products Tax Act;
11 [~~(21)~~] (20) Filmmaker's Credit Act; and
12 [~~(22)~~] (21) the telecommunications relay
13 service surcharge imposed by Section 63-9F-11 NMSA 1978, which
14 surcharge shall be considered a tax for the purposes of the Tax
15 Administration Act;

16 B. the administration and enforcement of the
17 following taxes, surtaxes, advanced payments or tax acts as they
18 now exist or may hereafter be amended:

- 19 (1) Resources Excise Tax Act;
- 20 (2) Severance Tax Act;
- 21 (3) any severance surtax;
- 22 (4) Oil and Gas Severance Tax Act;
- 23 (5) Oil and Gas Conservation Tax Act;
- 24 (6) Oil and Gas Emergency School Tax Act;
- 25 (7) Oil and Gas Ad Valorem Production Tax Act;

1 (8) Natural Gas Processors Tax Act;
2 (9) Oil and Gas Production Equipment Ad Valorem
3 Tax Act;

4 (10) Copper Production Ad Valorem Tax Act; and

5 (11) any advance payment required to be made by
6 any act specified in this subsection, which advance payment shall
7 be considered a tax for the purposes of the Tax Administration
8 Act;

9 C. the administration and enforcement of the
10 following taxes, surcharges, fees or acts as they now exist or
11 may hereafter be amended:

12 (1) Weight Distance Tax Act;

13 (2) Special Fuels Tax Act;

14 (3) the workers' compensation fee authorized by
15 Section 52-5-19 NMSA 1978, which fee shall be considered a tax
16 for purposes of the Tax Administration Act;

17 (4) Uniform Unclaimed Property Act;

18 (5) 911 emergency surcharge and the network and
19 database surcharge, which surcharges shall be considered taxes
20 for purposes of the Tax Administration Act;

21 (6) the solid waste assessment fee authorized
22 by the Solid Waste Act, which fee shall be considered a tax for
23 purposes of the Tax Administration Act; [and]

24 (7) the water conservation fee imposed by
25 Section 74-1-13 NMSA 1978, which fee shall be considered a tax

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1 for the purposes of the Tax Administration Act; and

2 (8) the gaming tax imposed pursuant to the
3 Gaming Control Act; and

4 D. the administration and enforcement of all other
5 laws, with respect to which the department is charged with
6 responsibilities pursuant to the Tax Administration Act, but only
7 to the extent that the other laws do not conflict with the Tax
8 Administration Act. "

9 Section 63. Section 10-15-1 NMSA 1978 (being Laws 1974,
10 Chapter 91, Section 1, as amended) is amended to read:

11 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
12 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

13 A. In recognition of the fact that a representative
14 government is dependent upon an informed electorate, it is
15 declared to be public policy of this state that all persons are
16 entitled to the greatest possible information regarding the
17 affairs of government and the official acts of those officers and
18 employees who represent them. The formation of public policy or
19 the conduct of business by vote shall not be conducted in closed
20 meeting. All meetings of any public body except the legislature
21 and the courts shall be public meetings, and all persons so
22 desiring shall be permitted to attend and listen to the
23 deliberations and proceedings. Reasonable efforts shall be made
24 to accommodate the use of audio and video recording devices.

25 B. All meetings of a quorum of members of any board,

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1 commission, administrative adjudicatory body or other
2 policymaking body of any state agency, any agency or authority of
3 any county, municipality, district or any political subdivision,
4 held for the purpose of formulating public policy, including the
5 development of personnel policy, rules, regulations or
6 ordinances, discussing public business or for the purpose of
7 taking any action within the authority of or the delegated
8 authority of any board, commission or other policymaking body are
9 declared to be public meetings open to the public at all times,
10 except as otherwise provided in the constitution of New Mexico or
11 the Open Meetings Act. No public meeting once convened that is
12 otherwise required to be open pursuant to the Open Meetings Act
13 shall be closed or dissolved into small groups or committees for
14 the purpose of permitting the closing of the meeting.

15 C. If otherwise allowed by law or rule of the public
16 body, a member of a public body may participate in a meeting of
17 the public body by means of a conference telephone or other
18 similar communications equipment when it is otherwise difficult
19 or impossible for the member to attend the meeting in person,
20 provided that each member participating by conference telephone
21 can be identified when speaking, all participants are able to
22 hear each other at the same time and members of the public
23 attending the meeting are able to hear any member of the public
24 body who speaks during the meeting.

25 D. Any meetings at which the discussion or adoption

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1 of any proposed resolution, rule, regulation or formal action
2 occurs and at which a majority or quorum of the body is in
3 attendance, and any closed meetings, shall be held only after
4 reasonable notice to the public. The affected body shall
5 determine at least annually in a public meeting what notice for a
6 public meeting is reasonable when applied to that body. That
7 notice shall include broadcast stations licensed by the federal
8 communications commission and newspapers of general circulation
9 that have provided a written request for such notice.

10 E. A public body may recess and reconvene a meeting
11 to a day subsequent to that stated in the meeting notice if,
12 prior to recessing, the public body specifies the date, time and
13 place for continuation of the meeting, and, immediately following
14 the recessed meeting, posts notice of the date, time and place
15 for the reconvened meeting on or near the door of the place where
16 the original meeting was held and in at least one other location
17 appropriate to provide public notice of the continuation of the
18 meeting. Only matters appearing on the agenda of the original
19 meeting may be discussed at the reconvened meeting.

20 F. Meeting notices shall include an agenda containing
21 a list of specific items of business to be discussed or
22 transacted at the meeting or information on how the public may
23 obtain a copy of such an agenda. Except in the case of an
24 emergency, the agenda shall be available to the public at least
25 twenty-four hours prior to the meeting. Except for emergency

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1 matters, a public body shall take action only on items appearing
2 on the agenda. For purposes of this subsection, an "emergency"
3 refers to unforeseen circumstances that, if not addressed
4 immediately by the public body, will likely result in injury or
5 damage to persons or property or substantial financial loss to
6 the public body.

7 G. The board, commission or other policymaking body
8 shall keep written minutes of all its meetings. The minutes
9 shall include at a minimum the date, time and place of the
10 meeting, the names of members in attendance and those absent, the
11 substance of the proposals considered and a record of any
12 decisions and votes taken that show how each member voted. All
13 minutes are open to public inspection. Draft minutes shall be
14 prepared within ten working days after the meeting and shall be
15 approved, amended or disapproved at the next meeting where a
16 quorum is present. Minutes shall not become official until
17 approved by the policymaking body.

18 H. The provisions of Subsections A, B and G of this
19 section do not apply to:

20 (1) meetings pertaining to issuance,
21 suspension, renewal or revocation of a license, except that a
22 hearing at which evidence is offered or rebutted shall be open.
23 All final actions on the issuance, suspension, renewal or
24 revocation of a license shall be taken at an open meeting;

25 (2) limited personnel matters; provided that

1 for purposes of the Open Meetings Act, "limited personnel
2 matters" means the discussion of hiring, promotion, demotion,
3 dismissal, assignment or resignation of or the investigation or
4 consideration of complaints or charges against any individual
5 public employee; provided further that this subsection is not to
6 be construed as to exempt final actions on personnel from being
7 taken at open public meetings, nor does it preclude an aggrieved
8 public employee from demanding a public hearing. Judicial
9 candidates interviewed by any commission shall have the right to
10 demand an open interview;

11 (3) deliberations by a public body in
12 connection with an administrative adjudicatory proceeding. For
13 purposes of this paragraph, an "administrative adjudicatory
14 proceeding" means a proceeding brought by or against a person
15 before a public body in which individual legal rights, duties or
16 privileges are required by law to be determined by the public
17 body after an opportunity for a trial-type hearing. Except as
18 otherwise provided in this section, the actual administrative
19 adjudicatory proceeding at which evidence is offered or rebutted
20 and any final action taken as a result of the proceeding shall
21 occur in an open meeting;

22 (4) the discussion of personally identifiable
23 information about any individual student, unless the student, his
24 parent or guardian requests otherwise;

25 (5) meetings for the discussion of bargaining

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1 strategy preliminary to collective bargaining negotiations
2 between the policymaking body and a bargaining unit representing
3 the employees of that policymaking body and collective bargaining
4 sessions at which the policymaking body and the representatives
5 of the collective bargaining unit are present;

6 (6) that portion of meetings at which a
7 decision concerning purchases in an amount exceeding two thousand
8 five hundred dollars (\$2,500) that can be made only from one
9 source and that portion of meetings at which the contents of
10 competitive sealed proposals solicited pursuant to the
11 Procurement Code are discussed during the contract negotiation
12 process. The actual approval of purchase of the item or final
13 action regarding the selection of a contractor shall be made in
14 an open meeting;

15 (7) meetings subject to the attorney-client
16 privilege pertaining to threatened or pending litigation in which
17 the public body is or may become a participant;

18 (8) meetings for the discussion of the
19 purchase, acquisition or disposal of real property or water
20 rights by the public body; [and]

21 (9) those portions of meetings of committees or
22 boards of public hospitals that receive less than fifty percent
23 of their operating budget from direct public funds and
24 appropriations where strategic and long-range business plans are
25 discussed; and

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1 (10) that portion of a meeting of the gaming
2 control board dealing with information made confidential pursuant
3 to the provisions of the Gaming Control Act.

4 I. If any meeting is closed pursuant to the
5 exclusions contained in Subsection H of this section, the
6 closure:

7 (1) if made in an open meeting, shall be
8 approved by a majority vote of a quorum of the policymaking body;
9 the authority for the closure and the subject to be discussed
10 shall be stated with reasonable specificity in the motion calling
11 for the vote on a closed meeting; the vote shall be taken in an
12 open meeting; and the vote of each individual member shall be
13 recorded in the minutes. Only those subjects announced or voted
14 upon prior to closure by the policymaking body may be discussed
15 in a closed meeting; and

16 (2) if called for when the policymaking body is
17 not in an open meeting, shall not be held until public notice,
18 appropriate under the circumstances, stating the specific
19 provision of the law authorizing the closed meeting and stating
20 with reasonable specificity the subject to be discussed is given
21 to the members and to the general public.

22 J. Following completion of any closed meeting, the
23 minutes of the open meeting that was closed or the minutes of the
24 next open meeting if the closed meeting was separately scheduled
25 shall state that the matters discussed in the closed meeting were

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1 limited only to those specified in the motion for closure or in
2 the notice of the separate closed meeting. This statement shall
3 be approved by the public body under Subsection G of this section
4 as part of the minutes. "

5 Section 64. Section 30-19-1 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 19-1, as amended) is amended to read:

7 "30-19-1. DEFINITIONS RELATING TO GAMBLING. -- As used in
8 Chapter 30, Article 19 NMSA 1978:

9 A. "antique gambling device" means a gambling device
10 twenty-five years of age or older and substantially in original
11 condition that is not used for gambling or commercial gambling or
12 located in a gambling place;

13 B. "bet" means a bargain in which the parties agree
14 that, dependent upon chance, even though accompanied by some
15 skill, one stands to win or lose anything of value specified in
16 the agreement. A bet does not include:

17 (1) bona fide business transactions that are
18 valid under the law of contracts, including ~~[without limitation]~~:

19 (a) contracts for the purchase or sale, at
20 a future date, of securities or other commodities; and

21 (b) agreements to compensate for loss
22 caused by the happening of the chance, including ~~[without~~
23 ~~limitation]~~ contracts for indemnity or guaranty and life or
24 health and accident insurance;

25 (2) offers of purses, prizes or premiums to the

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1 actual contestants in any bona fide contest for the determination
2 of skill, speed, strength or endurance or to the bona fide owners
3 of animals or vehicles entered in such contest;

4 (3) a lottery as defined in this section; or

5 (4) betting otherwise permitted by law;

6 [~~C. "lottery" means an enterprise other than the New
7 Mexico state lottery established and operated pursuant to the New
8 Mexico Lottery Act wherein, for a consideration, the participants
9 are given an opportunity to win a prize, the award of which is
10 determined by chance, even though accompanied by some skill. As
11 used in this subsection, "consideration" means anything of
12 pecuniary value required to be paid to the promoter in order to
13 participate in such enterprise;~~

14 ~~D.]~~ C. "gambling device" means a contrivance other
15 than an antique gambling device that is not licensed for use
16 pursuant to the Gaming Control Act and that, for a consideration,
17 affords the player an opportunity to obtain anything of value,
18 the award of which is determined by chance, even though
19 accompanied by some skill, [~~and~~] whether or not the prize is
20 automatically paid by the device; [~~and~~

21 ~~E.]~~ D. "gambling place" means [~~any~~] a building or
22 tent, [~~any~~] a vehicle, whether self-propelled or not, or [~~any~~] a
23 room within any of them that is not within the premises of a
24 person licensed as a lottery retailer or that is not licensed
25 pursuant to the Gaming Control Act, one of whose principal uses

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1 is:

2 (1) making and settling of bets;

3 (2) receiving, holding, recording or forwarding
4 bets or offers to bet;

5 (3) conducting lotteries; or

6 (4) playing gambling devices; and

7 E. "lottery" means an enterprise wherein, for a
8 consideration, the participants are given an opportunity to win a
9 prize, the award of which is determined by chance, even though
10 accompanied by some skill. "Lottery" does not include the New
11 Mexico state lottery established and operated pursuant to the New
12 Mexico Lottery Act or gaming that is licensed and operated
13 pursuant to the Gaming Control Act. As used in this subsection,
14 "consideration" means anything of pecuniary value required to be
15 paid to the promoter in order to participate in a gambling or
16 gaming enterprise. "

17 Section 65. Section 30-19-6 NMSA 1978 (being Laws 1963,
18 Chapter 303, Section 19-6, as amended) is amended to read:

19 "30-19-6. [~~PERMISSIVE LOTTERY~~] CHARITABLE LOTTERIES--
20 PERMITTED GAMBLING--CONDITIONS. --

21 A. Nothing in [~~Article 19~~] Chapter 30, Article 19
22 NMSA 1978 [~~shall be construed to apply to any~~] prohibits a sale
23 or drawing of [any] a prize at [any] a fair held in this state
24 for the benefit of [any] a church, public library or religious
25 society [situate or being] located in this state, or for

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1 charitable purposes when all the proceeds of [~~such~~] the fair
2 [~~shall be~~] are expended in this state for the benefit of [~~such~~]
3 the church, public library, religious society or charitable
4 purposes. A [~~lottery shall be operated~~] sale or drawing
5 conducted pursuant to this subsection is for the benefit of the
6 organization or charitable purpose only [~~when~~] if the entire
7 proceeds of the [~~lottery~~] sale or drawing go to the organization
8 or charitable purpose and no part of such proceeds go to any
9 individual member or employee [~~thereof~~] of the organization.

10 B. Nothing in [~~Article 19~~] Chapter 30, Article 19
11 NMSA 1978 [~~shall be held to prohibit any~~] prohibits a bona fide
12 motion picture [~~theatre~~] theater from offering prizes of cash or
13 merchandise for advertising purposes, in connection with [~~such~~]
14 the business of the theater or for the purpose of stimulating
15 business, whether or not [~~any~~] consideration other than a
16 monetary consideration in excess of the regular price of
17 admission is [~~exacte~~d] charged for participation in drawings for
18 prizes.

19 C. Nothing in [~~Article 19~~] Chapter 30, Article 19
20 NMSA 1978 [~~shall be held to apply to any~~] prohibits a bona fide
21 county fair, including [~~fairs~~] a fair for more than one county,
22 [~~which shall have~~] that has been held annually at the same
23 location for at least two years, [~~and which shall offer~~] from
24 offering prizes of livestock or poultry in connection with [~~such~~]
25 the fair [~~when~~] if the proceeds of [~~such~~] the drawings [~~shall be~~]

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1 are used for the benefit of [~~said~~] the fair.

2 ~~[D. Nothing in Article 19, Chapter 30 NMSA 1978 shall~~
3 ~~be construed to apply to any lottery operated by an organization~~
4 ~~exempt from the state income tax pursuant to Subsection C of~~
5 ~~Section 7-2-4 NMSA 1978 and not subject to the provisions of~~
6 ~~Subsection A of this section; provided that:~~

7 (1) ~~no more than two lotteries shall be~~
8 ~~operated in any year by such an organization;~~

9 (2) ~~all the gross proceeds less the reasonable~~
10 ~~cost of prizes of any lottery operated by such an organization~~
11 ~~shall be expended in the state for the benefit of the~~
12 ~~organization or public purposes; and~~

13 (3) ~~no part of the proceeds of any lottery~~
14 ~~shall go to any individual member or employee of any organization~~
15 ~~except as payment for the purchase of prizes at no more than the~~
16 ~~reasonable retail price.]~~

17 D. Nothing in Chapter 30, Article 19 NMSA 1978
18 prohibits an organization that is exempt from state income tax
19 pursuant to Section 7-2-4 NMSA 1978 from conducting bingo games,
20 raffles, lotteries or table games, including poker, craps,
21 blackjack, roulette and the like, at a fundraising event if:

22 (1) the fundraising event is conducted no more
23 than twice in a calendar year by the qualifying organization;

24 (2) the only persons authorized to participate
25 in the operation or management of the fundraising event are:

1 (a) bona fide members of the qualifying
2 organization who are not paid for their services in the operation
3 or management of the event; or

4 (b) persons who provide goods or services
5 for the fundraising event for a flat fee or an hourly fee
6 pursuant to a written contract with the qualifying organization;

7 (3) no person receives any part of the proceeds
8 of the fundraising event except:

9 (a) as payment for prizes purchased at no
10 more than the reasonable retail prices for the prizes; or

11 (b) pursuant to a contract described in
12 Subparagraph (b) of Paragraph (2) of this subsection;

13 (4) the net proceeds of the fundraising event
14 are expended in the state for the benefit of the qualifying
15 organization or purposes for which it was formed;

16 (5) gross revenue, expenses, prizes paid and
17 the date, time and location of the fundraising event are reported
18 to the alcohol and gaming division of the regulation and
19 licensing department within thirty days after the event;

20 (6) the qualifying organization conducting the
21 fundraising event maintains records for a period of one year
22 after the date of the event that accurately show the gross
23 revenue generated by the event, details of the expenses of
24 conducting the event and details of how the gross revenue is
25 used, and the qualifying organization makes the records available

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1 for review by the director of the alcohol and gaming division of
2 the regulation and licensing department or the attorney general,
3 or both, at their request;

4 (7) no more than four gambling devices are
5 operated during the fundraising event, two of which may be video
6 gaming machines or slot machines and shall be played with tokens
7 or chips, but not United States coins or currency, provided by
8 the qualifying organization;

9 (8) no person less than the age of twenty-one
10 is allowed to participate in the operation or management of the
11 fundraising event or to play any game at the event; and

12 (9) the fundraising event is conducted pursuant
13 to regulations and a permit issued by the alcohol and gaming
14 division of the regulation and licensing department.

15 E. The provisions of the Gaming Control Act, the
16 Bingo and Raffle Act and the New Mexico Lottery Act do not apply
17 to the activities described in Subsection D of this section."

18 Section 66. Section 60-7A-19 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 96) is amended to read:

20 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

21 A. It is a violation of the Liquor Control Act for a
22 licensee to knowingly allow commercial gambling on the licensed
23 premises.

24 B. In addition to any criminal penalties, any person
25 who violates Subsection A of this section may have his license

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1 suspended or revoked or a fine imposed, or both, pursuant to the
2 Liquor Control Act.

3 C. [~~For purposes of~~] As used in this section:

4 (1) "commercial gambling" means:

5 [~~(1)~~] (a) participating in the earnings of or
6 operating a gambling place;

7 [~~(2)~~] (b) receiving, recording or forwarding
8 bets or offers to bet;

9 [~~(3)~~] (c) possessing facilities with the intent
10 to receive, record or forward bets or offers to bet;

11 [~~(4)~~] (d) for gain, becoming a custodian of
12 anything of value bet or offered to be bet;

13 [~~(5)~~] (e) conducting a lottery where both the
14 consideration and the prize are money, or whoever with intent to
15 conduct a lottery possesses facilities to do so; or

16 [~~(6)~~] (f) setting up for use for the purpose of
17 gambling, or collecting the proceeds of, any gambling device or
18 game; and

19 (2) "commercial gambling" does not mean:

20 (a) activities authorized pursuant to the
21 New Mexico Lottery Act;

22 (b) the conduct of activities pursuant to
23 Subsection D of Section 30-19-6 NMSA 1978; and

24 (c) gaming authorized pursuant to the
25 Gaming Control Act on the premises of a gaming operator licensee

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1 licensed pursuant to that act. "

2 Section 67. SEVERABILITY.--If any part or application of
3 the Gaming Control Act is held invalid, the remainder or its
4 application to other situations or persons shall not be affected.

5 Section 68. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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